

ILLINOIS POLLUTION CONTROL BOARD

October 19, 2000

CITY OF ROCK ISLAND,)
)
 Petitioner,)
)
 v.) PCB 98-164
) (Variance - Water)
 ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,)
)
 Respondent.)
)

ORDER OF THE BOARD (by E.Z. Kezelis):

On August 16, 2000, the City of Rock Island (Rock Island) filed a motion to modify (motion) the Board's July 13, 2000 order in which Rock Island was required to conduct shoreline inspections within 12 hours of a combined sewer overflow (CSO) event. See City of Rock Island v. IEPA (July 13, 2000), PCB 98-164. In its motion, Rock Island sought to have the Board's order modified to reflect "the approved Shoreline Inspection Program currently in place." Mot. at 2. Rock Island, however, failed to provide the Board with any material documenting what the "approved Shoreline Inspection Program" might entail.

As a result, the Board's hearing officer directed Rock Island to supplement its motion with documentation specifying the exact terms of the shoreline inspection program. Additional information was thereafter submitted by Rock Island on September 15, 2000, and again on September 19, 2000.

Based on the information it received, the Board entered an order on September 21, 2000, which granted the City of Rock Island's motion and required Rock Island perform a shoreline inspection within 24 hours of a CSO event. In its motion, however, Rock Island had requested that it be allowed to conduct an inspection "by the next business day following an overflow event," rather than the 24 hours indicated in the Board's September 21, 2000 order. Mot. at 2.

Before any action to clarify the business day/24 hour discrepancy could be taken, however, the Illinois Environmental Protection Agency (Agency) filed an October 2, 2000 response to Rock Island's August 16 motion (Resp.). The Agency's response, which was more than 30 days late, was filed well after the Board's September 21, 2000 order granting the motion to modify. The response was not accompanied by a motion for leave to file *instanter* and no justification for the untimely response was given.

We will, nevertheless, briefly consider the arguments raised in the Agency's submission in order to assure that no real environmental concerns are overlooked. Briefly, the Agency argues that by allowing Rock Island to wait until the next business day following a CSO event, the delay could potentially result in the presence of offensive or hazardous conditions at the shoreline during periods of greater use of the river, typically weekends and holidays. Resp. at 8. Therefore, the Agency supports the Board's September 21, 2000 order in which Rock Island was ordered to perform a shoreline inspection within 24 hours of a CSO event.

In response to the Agency's arguments, on October 10, 2000, Rock Island sought leave to file a reply to the Agency's response to its motion (Reply). Leave is hereby granted. Rock Island maintains that the Agency's response is untimely and should not be considered by the Board. Reply at 1. Alternatively, Rock Island also provided substantive responses to the Agency's arguments. Attached to Rock Island's reply is an affidavit of Robert T. Hawes, Director of Public Works for the City of Rock Island. In his affidavit, Hawes states that in order to comply with the Board's order requiring shoreline inspections within 24 hours of a CSO event, Rock Island would have to place two employees on stand-by every weekend and on each holiday. Because Rock Island has a labor contract that would require payment to these employees on stand-by, Hawes states that the cost of compliance with this condition for the municipality would be approximately \$15,120 per year.

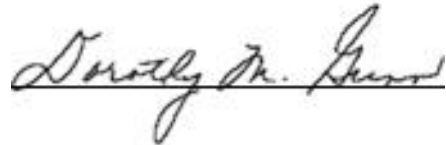
Furthermore, Rock Island argues that its past shoreline inspections have demonstrated that CSO events do not add significantly to the offensive materials along the shoreline. Reply at 2. In fact, Rock Island maintains that much of the debris retrieved from the shoreline appears to be generated by persons using the shoreline areas for recreational purposes. *Id.*

The Board is persuaded that Rock Island's anticipated cost of complying with this particular condition outweighs the possible benefits. While the Board is concerned about the presence of offensive or hazardous materials along the shoreline, the Board is not persuaded that the next business day schedule being proposed by Rock Island would result in such increased threat to the environment so as to justify the costs of compliance. Accordingly, the Board hereby modifies its previous orders of July 13, 2000, and September 21, 2000, to reflect that Rock Island is to perform a shoreline inspection on the next business day following a CSO event. This requirement is a condition to the variance granted to Rock Island by the Board on July 13, 2000.

IT IS SO ORDERED.

Chairman C.A. Manning abstained.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 19th day of October 2000 by a vote of 6-0.

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