

ILLINOIS POLLUTION CONTROL BOARD

February 6, 2003

IN THE MATTER OF:)
)
PETITION OF EXELON GENERATION) AS 03-1
COMPANY FOR AN ADJUSTED) (NPDES Adjusted Standard)
STANDARD FROM 35 ILL. ADM. CODE)
302.208)

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

On December 19, 2002, Exelon Generation Company (Exelon) filed a petition with the Board for an adjusted standard from 35 Ill. Adm. Code 302.208(g) (Pet.). Exelon seeks relief for discharges from its System Training Center (STC) located south of Braidwood in Will County. The discharge includes domestic and cafeteria waste streams, as well as pollution control waste produced in the electro dialysis reversal (EDR) process used to treat the brackish groundwater to potable standards. Exelon waives its opportunity for a hearing.

The STC discharges into a small drainage ditch tributary to Horse Creek, about 3.5 miles upstream of the confluence of Horse Creek with the Kankakee River. Exelon's National Pollutant Discharge Elimination System (NPDES) permit¹ limits total dissolved solids (TDS) in STC's discharge to 1000 mg/L. This limit, which is based on the Board's general use water quality standard for TDS (35 Ill. Adm. Code 302.208(g)), will become effective March 30, 2003. Exelon seeks a limit of 1900 mg/L TDS for discharges from its STC. According to the petition, Exelon's effluent exceeds the prospective TDS limits due to the high concentrations of TDS in the groundwater Exelon uses to provide water for the STC. Pet. at 3, 4.

Though Exelon has timely provided the required newspaper notice of its petition, the petition is deficient in some respects. Accordingly, in this order the Board identifies the petition's deficiencies and allows Exelon time to file an amended petition.

NOTICE

Section 28.1 of the Environmental Protection Act (Act) (415 ILCS 5/28.1 (2002)) and 35 Ill. Adm. Code 104.408 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 filing a petition for an adjusted standard with the Board. See 35 Ill. Adm. Code 104.408(a). As required by 35 Ill. Adm. Code 104.410, Exelon filed a certificate of publication with the Board on January 10, 2003, indicating that notice of the petition was published in the *Herald News* and the *Braidwood Journal* on January 1, 2003. The Board finds that the notice meets the requirements of the Act and the Board's procedural rules.

¹ NPDES permit No. IL0063100, issued by the Illinois Environmental Protection Agency (Agency).

ADDITIONAL INFORMATIONAL**REQUIREMENTS**

The Board finds that Exelon has not provided sufficient information as required by Section 104.406 of the Board regulations. 35 Ill. Adm. Code 104.406. The relevant subsections of Section 104.406 and information lacking under those subsections are discussed below:

A description of the nature of the petitioner's activity that is the subject of the proposed adjusted standard. The description must include the location of, and area affected by, the petitioner's activity. This description must also include . . . the qualitative and quantitative description of the nature of emissions, discharges or releases currently generated by the petitioner's activity. 35 Ill. Adm. Code 104.406(d).

Exelon's petition lacks information on: (1) the precise location of the point of discharge, such as latitude and longitude or a clear map showing the location relative to the unnamed tributary; (2) the location and length of the drainage channel created to receive the discharge (Pet. Attachment 1, Appendix E at 1); (3) the length of the affected tributary, and (4) whether it will seek to increase its permitted TDS loading (lbs/day) limit.

A narrative description of the proposed adjusted standard as well as proposed language for a Board order that would impose the standard. Efforts necessary to achieve this proposed standard and the corresponding costs must also be presented. 35 Ill. Adm. Code 104.406(f).

Exelon seeks an adjusted standard from the Board's general use water quality standards set forth in Section 302.208 of the Board's rules. The general use water quality standards apply to bodies of water. In situations similar to Exelon's, the Board has granted relief from the effluent standards found in Section 304.105. The Board's effluent standards do not include specific TDS limitations, but they in effect apply the water quality standards (found in Section 302.308) to individual dischargers. 35 Ill. Adm. Code 304.105.

While the Board has granted petitioners relief from its water quality standards in the past, it is generally reluctant to do so. Abbott Laboratories, AS 99-5, slip op. at 2 (July 8, 1999). The concern is that if the Board grants an adjusted standard from the water quality standard for a particular water body, other dischargers to that water body may believe that they enjoy the same regulatory relief even though the other dischargers have not made the same demonstrations. In re Rhône-Poulenc Basic Chemicals Co., Thorn Creek Basin Sanitary Dist., AS 94-7, slip op. at 19 (June 23, 1994). Consequently, the Board usually grants adjusted standards from the effluent limits, and has granted adjusted standards from the water quality limits only where the discharger has shown it is the only NPDES-permitted discharger into the water body. *See Id.*, at 33, 35-36; In re Material Service Corp., AS 02-1 (June 6, 2002); In re Rhodia, Inc. Thorn Crook Basin Sanitary Dist., Takasago Corp. (U.S.A.) and Consumers Illinois Water Co., AS 01-9 (Jan. 10, 2002). The Board also considers factors such as the nature of the drainage basin and dischargers to it, and the particular character of the contaminants at issue. Rhône-Poulenc, at 19.

To better assess Exelon's requested relief, the Board directs Exelon to indicate in its amended petition: (1) whether there are any other discharges to the stream at issue (the tributary

to Horse Creek) and, if applicable, what they are and their impact on TDS loadings; (2) any disadvantages to Exelon that may result from receiving an adjusted standard from the effluent standards of Section 304.105, rather than from the general use water quality standards of Section 302.208; and (3) the proper full name of STC (*See* Pet. at 1, Pet. at 6, Pet. Attachment 1).

The petition must cite to supporting documents or legal authorities whenever they are used as a basis for the petitioner's proof. Relevant portions of the documents . . . must be appended to the petition. 35 Ill. Adm. Code 104.406(k).

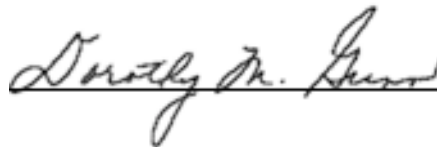
While Exelon states that its discharge will be subject to a TDS limit of 1000 mg/L pursuant to NPDES Permit No. IL0063100, Exelon did not submit a copy of the permit. The Board directs Exelon to append a copy of the permit to the amended petition. Exelon also requests that the Board direct the IEPA to modify the TDS level in Exelon's NPDES permit consistent with the limits established in this adjusted standard. However, the adjusted standard procedure cannot be used to change effluent limits in a permit. Abbot Laboratories, AS 99-5 at 5. Should the Board grant the requested adjusted standard in this matter, Exelon must then contact the Agency to change the effluent limits in its NPDES permit.

CONCLUSION

The Board finds that Exelon's adjusted standard petition lacks necessary information. The Board therefore directs Exelon to remedy the informational insufficiencies addressed above in an amended petition. The amended petition must be filed with the Board by May 7, 2003, or 90 days from the date of this order, or this case will be dismissed. Should Exelon timely file an amended petition, the Agency must file a response to the amended petition within 30 days after it is filed with the Board. *See* 35 Ill. Adm Code 104.416.

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 day of February 6, 2003 by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board