

ILLINOIS POLLUTION CONTROL BOARD
May 15, 1997

IN THE MATTER OF:)
)
THE GALESBURG SANITARY DISTRICT) AS 94-20
PETITION FOR AN ADJUSTED) (Adjusted Standard - Water)
STANDARD FROM 35 ILL. ADM. CODE)
304.105)

ORDER OF THE BOARD (by J. Yi):

On March 11, 1997, Galesburg Sanitary District (District) filed a motion to amend requested relief. On March 19, 1997, the Illinois Environmental Protection Agency (Agency) filed a motion to strike Galesburg Sanitary District's motion to amend requested relief. On April 1, 1997, the District filed a response to the motion to strike and a motion to file instanter. The Board grants the motion to file instanter and accepts the District's response.

In its motion the District contends that it is necessary to alter the requested relief for two reasons. First, the District notes that it has already obtained a construction permit that was part of the original conditions of the requested adjusted standard. Second, the District makes this request to reflect the revised ammonia nitrogen rules adopted by the Board on December 19, 1996 in R94-1(B), In the Matter of: Triennial Water Quality Review.

As a result of these changes, the District makes three modifications to the relief requested: 1) the District deletes the condition requiring it to obtain a permit to construct a digester supernatant treatment system since the District has already obtained a permit; 2) it modifies the monthly average discharge of ammonia for the time period after the digester equipment has been installed from 1.9 mg/L to 2.2 mg/L to reflect changes in the water quality standard as adopted in R94-1(B) from which the effluent level is derived; and 3) it changes the introductory paragraph to reflect the amendments from R94-1(B). Specifically, the District's introductory paragraph sought relief from 35 Ill. Adm. Code 304.105 generally as it applied to ammonia nitrogen. The District's March 11, 1997 request for an adjusted standard amends the previous request to reflect that it seeks an adjusted standard from Section 304.105 as it applies to 35 Ill. Adm. Code 312.212, as recently amended in R94-1(B), which now sets forth the ammonia nitrogen water quality standards.

The Agency maintains that the District's motion should be struck as untimely. The Agency contends that the Board's procedural rules only allow for the amendment of a petition for adjusted standard prior to the close of a hearing. (35 Ill. Adm. Code 106.715.) Hearings on this matter were completed on September 8, 1995. The Agency maintains that the Board should strike the motion to amend the requested relief because the District has indicated throughout these proceedings that the amendments of R94-1(B) were irrelevant in this proceeding.

The Agency maintains that all of the evidence and data presented, discussed, briefed and argued in this proceeding was based on the requested relief from the ammonia nitrogen water quality standards as adopted in 1982. The Agency contends that if the District wishes to seek relief from the ammonia standards as amended in R94-1(B), it should withdraw this petition and file a new petition based on the new ammonia standards. The Agency also contends that the Board could dismiss this petition as deficient and frivolous pursuant to 35 Ill. Adm. Code 106.902. The Agency maintains that the petition as filed no longer complies with the requirements of 35 Ill. Adm. Code 106.705.

The Agency also maintains that since Galesburg filed its request to amend the relief as a motion instead of an amended petition, the Agency was only allowed seven days to respond to the motion instead of the 30 days allowed for a response to an amended petition. If the Board does not grant the Agency's motion to strike, the Agency requests 30 days to respond to the substantive issues in the motion.

In response to the Agency's motion, the District contends that the Agency improperly characterizes its motion to amend requested relief as an amended petition. The District asserts that the motion is more in the nature of a comment on the impact of the adoption of the revised ammonia rules. In addition, the District maintains that since the motion is not an amended petition it is not untimely nor is it necessary for the Agency to be granted an extended time period to respond to the motion. The District asserts that it has always sought relief from the current rules and since the rules have changed it is necessary that the relief change accordingly. The District observes that it would be absurd for the Board to grant relief from rules which are no longer applicable. The District contends that requiring the filing of a new petition in this matter would result in further delay and additional expense.

The Board denies the Agency's motion to strike the District's motion to amend requested relief. The Board is compelled by the unusual circumstances created by the relationship between this adjusted standard petition and the amendments to the ammonia water quality standards in R94-1(B). Although R94-1(B) does not amend Section 304.105 which prohibits the exceedence of any water quality standard, it does amend Section 302.212 which sets forth the ammonia nitrogen water quality standard. The District is requesting to exceed the ammonia nitrogen water quality standard by this adjusted standard petition. Since the District is seeking relief from Section 304.105 so that it may exceed the ammonia nitrogen water quality standard, the amendments of the ammonia nitrogen water quality standard in R94-1(B) should be reflected in the proposed adjusted standard language.

The amendments in R94-1(B) were filed in February of 1994 and adopted by the Board in December of 1996. The rulemaking was pending throughout this adjusted standard proceeding and the record in the adjusted standard makes numerous references to the pending rulemaking and its relationship to the petition. The amendments in R94-1(B) changed the ammonia nitrogen water quality regulations applicable to the District. The changes requested by the District are in response to those amendments. An adjusted standard can only be granted to a party from a regulation which is applicable to that party. Similarly, the conditions of an adjusted standard should reflect the regulations applicable to the party.

The Board finds that the amended relief requested by the District is not substantially different from its previous request. The District's modified relief is still requesting an adjusted standard from Section 304.105 as it applies to the ammonia nitrogen concentrations in its discharge. These modifications were requested to reflect changes in circumstances over time and changes due to amendments to the applicable regulations.

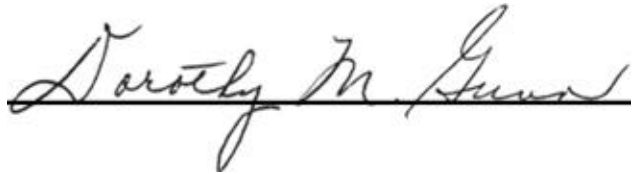
The Board finds no compelling reason not to consider the amended relief requested by the District. Ultimately, in reviewing the record in this matter, the Board will consider whether the record supports granting of the relief as amended by the District's motion.

The Board grants the Agency's request for additional time to respond to the substantive issues raised by the motion to amend requested relief. The Board grants the Agency until June 13, 1997 to file a response to the District's request for alternate relief.

IT IS SO ORDERED.

Board Member K. Hennessey abstained.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 15th day of May, 1997, by a vote of 5-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a solid horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board