

ILLINOIS POLLUTION CONTROL BOARD
January 10, 2002

CITY OF STREATOR,)
)
 Petitioner,)
)
 v.) PCB 02-04
) (NPDES Variance – Water)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

BETH A. HARVEY, CAROLYN S. HESSE, BARNES & THORNBURG, APPEARED ON BEHALF OF PETITIONER; and

DEBORAH J. WILLIAMS, ASSISTANT COUNSEL, APPEARED ON BEHALF OF RESPONDENT.

OPINION AND ORDER OF THE BOARD (by R.C. Flemal):

This matter comes before the Board upon an amended petition for variance filed by the City of Streator (Streator). Streator seeks a variance from the Board's restricted status regulations to allow additional hookups to its overloaded wastewater treatment plant located on the Vermilion River in Streator, LaSalle County.

The Board's responsibility in this matter arises from the Environmental Protection Act (Act) (415 ILCS 5/1 *et seq.* (2000)). The Board is responsible for granting a variance from Board regulations whenever it finds that immediate compliance with the regulations would impose an arbitrary or unreasonable hardship upon the petitioner. 415 ILCS 5/35(a) (2000). The Illinois Environmental Protection Agency (Agency) is required to appear in hearings on variance petitions. 415 ILCS 5/4(f) (2000). The Agency also has the responsibility of investigating each variance petition and making a recommendation to the Board as to the disposition of the petition. 415 ILCS 5/37(a) (2000).

For the reasons explained below, the Board finds that Streator presents adequate proof that immediate compliance with the Board's regulations would result in the imposition of an arbitrary or unreasonable hardship of a limited nature. Accordingly, the Board will grant the variance request, but in limited part.

BACKGROUND

Streator filed a variance petition on July 13, 2001. On July 30, 2001, the Agency filed a motion to dismiss the petition. On August 9, 2001, the Board denied the motion to dismiss and ordered Streator to file an amended petition addressing the content requirements of 35 Ill. Adm. Code 104.204. Streator filed an amended petition on September 10, 2001. On

October 31, 2001, the Agency filed a recommendation that the Board deny the amended petition. On November 13, 2001, Streator filed a response to the Agency's recommendation.

Hearing was held on November 14 and 15, 2001, in Ottawa, before Board Hearing Officer Steven Langhoff. Both parties called witnesses. Streator's witnesses were: Ray Schmitt, the mayor of Streator; Larry Good, a Professional Engineer at Chamlin & Associates; and Paul Nicholson, the city manager of Streator. The Agency's witnesses were: Charles Corley, inspector for the Agency; Roger Callaway, from the Agency's compliance assurance section; and Gary Bingenheimer and Alan Keller, from the Agency's permit section. Members of the public attended. A public comment was admitted at hearing from Wilson Haller, operations manager for the Illinois division of the Carriage House Companies, Inc., parent company of Red Wing. On November 20, 2001, the Board received a public comment from a member of the public.

On December 6, 2001, Streator filed its post-hearing brief. On December 13, 2001, the Agency filed its post-hearing brief.¹

FACILITY DESCRIPTION

Streator operates a wastewater treatment plant (plant) located in the western portion of the city along the eastern edge of the Vermilion River in LaSalle County. Am. Pet. at 1. The plant provides sewer services to Streator and to certain areas outside of the city limits. Am. Pet. at 1. The plant discharges into the Vermilion River in LaSalle County through outfall 001. Am. Pet. at 1. Streator contracts with U.S. Filter to operate the plant. Am. Pet. at 2. U.S. Filter employs five people at the plant. Am. Pet. at 2.

The plant consists of an influent lift station, headworks, oxidation ditch, final clarifiers, chlorine contact tanks, sludge storage tanks, and an effluent lift station. Am. Pet. at 2. The plant receives wastewater from residences, commercial businesses, and industrial sources. Am. Pet. at 2.

Streator contends that in the last year, the influent organic loading measured in terms of five day biochemical oxygen demand (BOD₅) averaged 6,300 pounds/day. Am. Pet. at 2. The Agency counters that in the last year, the Agency calculations show that the influent BOD₅ loading averaged 6,399 pounds/day. Rec. at 7.²

¹ Citations to the Amended Petition will be referenced as "Am. Pet. at ___." Citations to the Agency's Recommendation will be referenced as "Rec. at ___." Citations to Streator's response will be referenced as "Resp. at ___." Citations to the hearing transcripts will be cited as "Tr. at ___." Citations to Streator's post-hearing brief will be referenced as "Streator Br. at ___." Citations to the Agency's post-hearing brief will be referenced as "Agency Br. at ___."

² In its response, Streator explains the numerical difference may be due to rounding and the use of monthly averages rather than daily values. Resp. at 6.

STIPULATED FACTS

At hearing, the parties stipulated to various facts, including the following:³

Discharge from the plant is authorized under the National Pollutant Discharge Elimination System (NPDES) permit number IL0022004. Streator disposes of its wastewater sludge through land application authorized under Land Application Permit number 2001-SC-2254.

On September 18, 2000, Streator received a Notice of Restricted Status, dated September 15, 2000, which stated that “a recent review of information available to this Agency indicates that the City of Streator’s Sewage Treatment Plant is being operated with a tributary waste load of approximately 161 percent of the organic design capacity.” The plant is currently approved for a design organic loading of 5,000 pounds of BOD₅/day. The NPDES permit does not specify the 5,000 pounds of BOD₅/day design capacity. The NPDES permit does not limit organic loading influent to the plant. The Agency placed Streator on restricted status because the BOD₅ organic loading during July 1999 - June 2000 exceeded the 5,000 pounds/day design capacity of the plant.⁴

The permitted discharge limits are a daily maximum of 20 mg/L and a monthly average of 10 mg/L for carbonaceous BOD₅. The permitted discharge limits for ammonia-nitrogen are a daily maximum of 2.5 mg/L from April through October and 5.5 mg/L from November through March, and a monthly average of 1.0 mg/L April through October and 3.1 mg/L from November through March. The permitted discharge limits for total suspended solids are a daily maximum of 24 mg/L and a monthly average of 12 mg/L.

The Agency issued permits to The Red Wing Company, Inc. (Red Wing), a significant industrial user as defined by 35 Ill. Adm. Code 310.110, to discharge to the plant.⁵ Permit number 1996-EO-2555 issued on December 17, 1996, by the Agency to Red Wing, authorized the discharge of 2,576 population equivalents of BOD₅ at a design average flow of 15,000 GPD/day which is equal to 438 pounds of BOD₅/day.

An extensive network of mines exists beneath Streator. Discharges from septic tanks may leach into the abandoned mines.

Streator is under a consent decree, dated November 8, 1989 and amended June 10, 1992. The decree requires Streator to eliminate the discharge of raw sewage into the abandoned mines by providing sewer connections to Streator’s wastewater treatment plant.

³ The stipulation was filed at hearing.

⁴ Streator’s Daily Monitoring Reports (DMR) for the period July 1999 to June 2000 indicate the organic loading was 8,035 lbs BOD₅/day. Am. Pet. at 3.

⁵ Red Wing manufactures products such as table syrup, peanut butter, honey, and syrups for flavoring drinks. Streator Br. at 10.

On June 28, 2001, Streator submitted a compliance plan to the Agency to address the sludge management issues that caused three ammonia exceedences at the treatment plant. On June 29, 2001, the Agency accepted the compliance plan. The plan includes installing a belt filter press and constructing a building where the press will be located. The plan also includes measures to equalize the organic loading from Red Wing.

Streator hired Raymond Professional Group and U.S. Filter Engineering and Construction (Raymond) to evaluate the options for expansion of the treatment plant. Raymond prepared a report recommending installing a vertical loop reactor, re-rating the organic capacity of the existing oxidation ditch, and adding additional sludge storage and disposal facilities. Streator submitted this design report to the Agency for review. The Agency approved the design basis in a letter received by Streator on March 27, 2001.

REGULATORY FRAMEWORK

Nature of Variances

In determining whether any variance is to be granted, the Act requires the Board to determine whether a petitioner has presented adequate proof that immediate compliance with the Board regulations at issue would impose an arbitrary or unreasonable hardship. 415 ILCS 5/35 (a) (2000). Furthermore, burden is on the petitioner to show that its claimed hardship outweighs the public interest in attaining compliance with regulations designed to protect the public. Willowbrook Motel v. PCB, 135 Ill. App. 3d 343, 481 N.E.2d 1032 (1st Dist. 1985). Only with such a showing can the claimed hardship rise to the level of unreasonable hardship.

A further feature of a variance is that it is, by its nature, a temporary reprieve from compliance with the Board's regulations, and compliance is sought regardless of the hardship which the task of eventual compliance presents an individual polluter. Monsanto Co. v. PCB, 67 Ill. 2d 276, 287, 367 N.E.2d 684, 688 (1977). Accordingly, except in certain special circumstances, a variance petition is required, as a condition to a grant of variance, to include a plan which is reasonably calculated to achieve compliance within the terms of the variance.

Regulations at Issue

Streator requests relief in varying ways. Streator requests that the Board “grant a variance from the restricted status designation until [the Agency] removes the restricted status or re-rates the organic capacity of the plant.” Am. Pet. at 8. Streator also requests a variance from 35 Ill. Adm. Code 306.402 restricted status to allow a Kroger strip mall⁶ (strip mall) and a Super 8 motel (motel) to connect to Streator’s wastewater treatment plant. Streator Br. at 1.⁷ Section 306.402 provides:

⁶ The strip mall is comprised of six or seven stores. Streator Br. at 20.

⁷ To the extent that on page 22 of its brief, Streator “would like” to add “some unincorporated residences in LaSalle County near the MacIntosh area” to the sewer system, the Board rejects the request for lack of specificity.

Restricted status shall be defined as the Agency determination, pursuant to Section 39 of the Act and Section 309.241, that a sewer has reached hydraulic capacity or that a sewage treatment plant has reached design capacity, such that additional sewer connection permits may no longer be issued without causing a violation of the Act or regulations. 35 Ill. Adm. Code 306.402.

Streator further states that it wants a variance from restricted status to allow up to 8,100 pounds of BOD₅/day based on a running annual average, until the Agency re-rates Streator's treatment plant. Am. Pet. at 3; Streator Br. at 1.⁸ Streator wants the variance so it can encourage growth and economic development by providing sewer services to the strip mall and the motel. Am. Pet. at 9; Streator Br. at 19-20. Streator requests the variance for a period of 5 years or until it begins operation of its sludge belt filter press and the Agency re-rates its plant, whichever comes first. Am. Pet. at 1, 16.

On December 12, 2001, the Agency sent a letter to Ray Schmitt, the mayor of Streator, informing him that the Agency would approve a design organic load of 6,880 pounds of BOD₅/day after Streator has installed the belt filter press. Streator Br. at Exh. B. Since the filter press has not been built (see below), the letter does not moot any issues in today's decision.

Scope of the Variance

For the reasons explained below, the Board finds the record sufficient to support variance from restricted status with respect to sewer connections for the strip mall and motel. We do not find support in the record sufficient to allow us to consider granting variance for other possible connections, or for grant of variance from restricted status.

COMPLIANCE PLAN

Streator contends it will provide a permanent solution to the sludge management issues that caused the three ammonia exceedences at the plant. Am. Pet. at 11. The solution includes installing a belt filter press and constructing a building to locate the filter press. Am. Pet. at 11-12. Streator estimates that it will cost \$900,000 to build both the filter press and the building. Am. Pet. at 12. Streator expects to complete the installation and construction before Spring 2002. Am. Pet. at 12.

During the term of the variance, Streator claims it will reduce the amount of sludge stored in inventory by increasing the frequency of land application to three times a year at a cost of \$100,000 - \$200,000, rather than the current two times a year. Am. Pet. at 12. Streator will remove sludge when it reaches 90% of its storage capacity. Am. Pet. at 12. Streator argues if it

⁸ Streator suggests the Board could revise Streator's restricted status pursuant to 35 Ill. Adm. Code 392.401. Resp. at 4-5; Tr. at 35. To the extent that the Board grants a variance in this case, it is pursuant to 35 Ill. Adm. Code 306.402

is impossible to land apply the sludge when it is removed, Streator will bring in a portable sludge filter press to dewater the sludge, which will permit the sludge to be disposed of in a landfill. Am. Pet. at 12. Streator claims it would take one week to obtain a press. Am. Pet. at 13.

Streator points out that Red Wing, Streator's only significant industrial discharger, has agreed to construct and install equalization tanks at its facility, to equalize the flow of wastewater from Red Wing to the plant. Am. Pet. at 13. The tanks should be installed by October 1, 2001, at no cost to Streator. Am. Pet. at 13.⁹ Streator also argues that Red Wing is losing a contract to produce certain syrups at the end of June 2002. Streator Br. at 11. Streator estimates that the organic loading to the plant could decrease below 5,000 pounds/day if Red Wing loses the contract. Streator Br. at 11.

Streator plans to be removed from restricted status by obtaining a re-rating of the plant's organic loading capacity. Am. Pet. at 14. On September 28, 2001, Streator submitted a request to the Agency to re-rate the plant, along with a report from Chamlin and Associates indicating the plant could be re-rated at an average of 8,100 pounds of BOD₅/day. Streator Br. at 12. Streator's expert, Good, testified that the plant exhibits the capacity to handle and remove BOD₅ at sustained organic loadings of 8,000 to 10,000 pounds/day. Streator Br. at 17. Agency witness Keller stated it could take from two months to a year to re-rate the plant. Streator Br. at 16.¹⁰

Streator hired Raymond to suggest how to increase organic treatment capacity at the plant. Am. Pet. at 14. Raymond's report recommended installing a vertical loop reactor (VLR), re-rating the organic capacity of the existing oxidation ditch, and adding additional sludge storage and disposal facilities. Am. Pet. at 14. Raymond estimates the cost of implementing the report's recommendations would be \$3.5 million. Streator intends to get funding and construct the additions to the plant to increase its sludge handling capacity. Am. Pet. at 14.

The Agency notes that Streator did not provide what it would cost Streator to comply with the Act and Board's regulations. Rec. at 10. The Agency argues that Streator could comply for free if Streator would prohibit further sewer connections until the restricted status is lifted. Rec. at 10-11. The Agency observes that Streator could also achieve compliance by getting restricted status lifted. Rec. at 11. To be removed from restricted status, Streator would need to fulfill the Agency's approved compliance plan which involves installing the belt filter press, a VLR and provide sufficient space for sludge storage. Rec. at 11.

The Agency argues that Streator fails to include overall capital costs and annualized capital and operating costs as Section 104.204(d) requires. Rec. at 11. The Agency also argues that it is unclear whether it will cost \$100,000 - \$200,000 for land application three times a year,

⁹ At hearing, Corley testified that he last visited Red Wing on October 9, 2001. Br. at 272. On that date, Red Wing had installed temporary tanks on an experimental basis. Streator Br. at 8, Tr. at 274; Tr. at 274-5.

¹⁰ Streator filed a re-rate application with the Agency on October 3, 2001, claiming that the plant should be re-rated to an organic locate of 8,100 pounds/day of BOD₅. Rec. at 16.

or just for the additional third year. Rec. at 11. The Agency notes that Streator did not provide documentation for the costs related to the portable sludge press. Rec. at 12.

The Agency argues that the amended petition does not include a complete discussion of cost of the various compliance alternatives. Rec. at 12. The Agency also observes that Streator has not made a commitment or applied for a permit to build the VLR. Rec. at 12-13. The Agency surmises that if the variance is granted, Streator will not build the VLR when the variance expires, unless it has not gotten off restricted status. Rec. at 13.

The Agency also argues that Streator has not committed to a definite method to get off restricted status. Agency Br. at 22. Additionally, the Agency contends that Streator's failure to determine whether to build the VLR, and if so, when it will be built is not "expeditiously pursuing the plan approved by" the Agency. Agency Br. at 22-23.

HARDSHIP

Streator argues that compliance with restricted status poses an arbitrary or unreasonable hardship on the city. Am. Pet. at 8. It claims that restricted status unfairly restricts Streator's ability to support economic development of its businesses. Am. Pet. at 8. Specifically, Streator argues that Streator has lost many jobs in the last 40 years, and restricted status prevents positive business and economic growth. Streator Br. at 20.

Streator is now under a Consent Decree, dated November 8, 1989 (amended June 10, 1992) from the Agency to construct a new treatment works and eliminate the discharge of raw sewage into the abandoned mines by providing sewer connections to the plant. Am. Pet. at 9-10, Rec. Exh. B. T. The new treatment works were to be "adequately sized to serve the projected 20-year wasteload from an expanded services area [including] the entire City, certain contiguous unincorporated developments, and industries not currently discharging to the City system." Streator completed construction of the new treatment works in March 1992. Rec. Exh. B at 7, 12. To date, Streator has spent \$33 million to upgrade the plant as well as eliminate such discharges and the use of septic tanks within the City limits. The State has contributed approximately 70% of the funds for this. Resp. at 11, Tr. at 26, 51. Less than 9 years later, the 20-year design organic waste load had already been exceeded.

Streator argues that the hardship is not self-imposed by its inactivity or decision making. Streator Br. at 30. Streator notes that it has only been on restricted status since September 2000. Streator Br. at 30. Since being placed on restricted status, it submitted a report to the Agency to upgrade the plant. Streator Br. at 30. Streator also approved \$4 million in bonds to upgrade the plant and sewer lines. Streator Br. at 30. Streator also issued bonds to pay for the belt filter press. Streator Br. at 30. Streator contends that it has not delayed in implementing a compliance plan. Streator Br. at 30.

Streator argues that it is not appropriate for the Agency to hold Streator responsible for the current level of organic loading at the plant because 75% of the current influent organic loadings are from Red Wing, which has a discharge permit from the Agency. Am. Pet. at 7.¹¹

Streator denies any argument that it already violated its restricted status because the Super 8 motel connected to the sewer line without an Agency permit. Streator Br. at 20-21. Streator argues that the contractor put in the sewer connection, and upon learning of the connection, the mayor ordered its disconnection. Streator Br. at 21. Streator notes that since this occurred while the motel was still under construction, there were no discharges from the motel into the sewer. Streator Br. at 21.

Streator cites City of West Chicago v. IEPA, PCB 97-51 (Nov. 21, 1996) and Village of Lake Zurich v. IEPA, PCB 97-77 (Feb. 20, 1997) to support its argument that the hardship Streator faces was previously found to be an arbitrary or unreasonable hardship when there was no significant injury to the environment. Streator Br. at 27. In City of West Chicago, Streator argues the Board granted a variance because petitioner's hardship was arbitrary and unreasonable in comparison to the environmental impact. Streator Br. at 28. In Village of Lake Zurich, Streator argues the Board agreed with petitioner that its hardship outweighed the environmental impact. Streator Br. at 28.

The Agency argues that placing Streator on restricted status was not arbitrary. Agency Br. at 13. The Agency notified Streator of its determination, after seeking Streator's input and holding three meetings and one conference call. Agency Br. at 13.

The Agency also argues that Streator's hardship is not unreasonable. Agency Br. at 13. The Agency notes that both the strip mall and the motel have alternative plans to address their immediate, short-term wastewater needs: a septic system and a storage tank system, respectively. Agency Br. at 14. The Agency argues that neither project will be halted without a variance, and Streator will realize new jobs and increased tax revenue with or without the variance. Agency Br. at 14. The Agency further argues that failure to realize an economic benefit, such as city taxes and jobs, is not an arbitrary or unreasonable hardship. Rec. at 27, citing Philipsborn Equities, Inc. v. PCB, 94 Ill. App. 3d 1055, 419 N.E.2d 470 (1st Dist. 1981). The Agency argues that Streator signed off on the motel's building permit and sewer connection application, when Streator knew the motel would not be able to receive an Agency permit. Rec. at 27-28.

The Agency argues that Streator's hardship is self-imposed. Rec. at 25; Agency Br. at 16. The Agency argues that if Streator had identified the strip mall and the motel at the time of the restricted status discussion, the Agency, in all likelihood, would have granted those projects an exemption from the restricted status determination. Agency Br. at 16. The Agency also argues that if Streator objects to Red Wing's discharge, Streator may, among other things, bring an enforcement action if Red Wing is discharging in excess of its permit levels. Rec. at 24-25. The Agency notes that Streator signed off on Red Wing's permit. Rec. at 25.

¹¹ In its brief, Streator alleges Red Wing discharges 30%-40% of the total organic loading to Streator's plant. Streator Br. at 11.

The Agency disputes that the caselaw cited by Streator shows that its alleged hardship has been previously found to be arbitrary or unreasonable when there is little environmental harm. The Agency argues that the Board held in Village of Lake Zurich that:

The loss of tax income and job opportunities coupled with regulatory uncertainty would be an arbitrary and unreasonable hardship which outweighs the minimal environmental impact of a variance extension. Village of Lake Zurich v. IEPA, PCB 97-77 (Feb. 20, 1997). Agency Br. at 19.

The Agency argues that it is misleading to separate the importance of regulatory uncertainty from the Board's holding and conclude that a variance is appropriate if a petitioner can show a deviance from a standard will not have a direct adverse environmental consequence. Agency Br. at 20.

ENVIRONMENTAL CONSIDERATIONS

Streator argues that if sewer service is not available, new developments will likely discharge to septic systems. Am. Pet. at 9. Streator contends that using septic tanks is not favored over connection to a municipal sewer system where the system can effectively treat the wastewater. Am. Pet. at 9. Streator argues that septic tanks pose a greater adverse impact to the environment than sending increased organic loadings to a facility that can treat the increased loadings. Am. Pet. at 9. Streator argues that granting the variance will result in environmental benefits from improved performance of the plan and preventing the construction of additional septic systems. Am. Pet. at 11.

Streator claims that if it is removed from restricted status there will be no adverse environmental impact because Streator can maintain compliance with the NPDES permit limitations with organic loads greater than the currently rated design capacity of 5,000 pounds/day. Am. Pet. at 10.

Streator contends that the organic loadings of the motel and strip mall will only add an additional eight pounds of organic loading per day. Am. Pet. at 10; Streator Br. at 18. Streator argues that when the Agency planned to put Streator on restricted status, Streator met with the Agency to discuss projects that were planned to get those projects exempted in the restricted status letter. Streator Br. at 17. The exempted projects will create a load of approximately 123 pounds/day of BOD₅. Streator Br. at 18.

The Agency argues that generally, sewage treatment plants are preferable to septic tanks, but Streator cannot show that it can effectively treat the organic loading it is currently receiving. Rec. at 14. As a result, additional sewer connections will cause more violations of the Act and Board regulations. Rec. at 14.

The Agency disagrees that environmental harm will necessarily result from septic systems that conform with the Department of Public Health regulations. Rec. at 13.¹² The Agency points out that it exempted certain projects from restricted status when it evaluated the danger of environmental harm related to connecting septic systems to Streator's plant. Rec. at 13.

The Agency argues that Streator cannot demonstrate that it is capable of effectively treating the organic loading it currently receives, and more connections will cause further violations of the Act and Board regulations. Rec. at 14.

The Agency agrees that it did not quantify the environmental harm that might result from an additional 8 pounds/day of loading at the plant. Agency Br. at 17. The Agency argues that continued overloading of the plant will continue the current environmental impact, and increased overloading will in some way increase the impact. Agency Br. at 18.

The Agency disagrees with Streator's claim that Streator can maintain compliance with the NPDES permit limitations if granted a variance. Rec. at 15. The Agency contends that Streator cannot treat its current effluent without ammonia violations, and has not yet demonstrated that the plant should be re-rated. Rec. at 15.

The Agency has "undertaken" an enforcement action against Streator and the motel for connecting to Streator's plant without an Agency permit and in violation of restricted status. Rec. at 16.¹³

CONSISTENCY WITH FEDERAL LAWS

Streator states that it is complying with federal law because it has met the BOD₅ limits in its NPDES permit. Am. Pet. at 16. Streator argues that granting the variance is consistent with the Federal Water Pollution Control Act, 33 U.S.C. Section 1251 *et seq.*. Am. Pet. at 16. Streator does not address this issue in its post-hearing brief.

The Agency argues that Streator has failed to show that a variance would be consistent with the Clean Water Act. Rec. at 28. The Agency does not believe that if Streator complies with the BOD₅ limit in its NPDES permit that a variance would necessarily be consistent with federal law. Rec. at 29.

ANALYSIS

Compliance Plan

¹² In its response, Streator argues this position conflicts with the consent decree, which mandates eliminating the use of septic tanks within the city limits because old mines are underneath the city and sewage continues to discharge directly to those mines. Resp. at 11.

¹³ The Board has not received an enforcement action regarding Streator.

The Board finds that Streator's compliance plan is sufficient to grant a variance from restricted status for the limited purpose of allowing the strip mall and the motel to connect to the plant. Streator has initiated measures to address the ammonia violations and the issue of inadequate organic treatment capacity. The measures include adding nitrifying bacteria to the operation, changing the manner in which it handles decant from the sludge storage tanks, removing sludge from storage more frequently, working with Red Wing to equalize its organic loading to the plant, constructing a sludge belt filter press, and having the plant re-rated. Based on the effectiveness of these measures, Streator will also evaluate the need to install a VLR.

Additionally, as a parallel effort to the instant variance, Streator has asked the Agency to re-rate the organic design capacity of the Plant and subsequently lift the Restricted Status. On December 12, 2001, after Streator filed its post-hearing brief and before the Agency filed its post-hearing brief, the Agency notified Streator that it "would approve a design organic load of 6,880 pounds of BOD₅ per day" after Streator installs the filter press. The press is supposed to be constructed and installed before Spring 2002.

To finance capital improvements, Streator has approved \$4 million in bonds to increase plant capacity and/or extend sewer service to areas presently unsewered. Part of that money is being used for installation of the belt filter press and building. How the remainder of that money will be spent depends on plant performance after the permanent filter press is installed, nitrifying measures are investigated, and potential changes in discharge volume from Red Wing are confirmed. If there are still ammonia violations, the bond money will be used for installation of the VLR.

The Agency contends that Streator has neither committed to building the VLR nor obtained a permit to build it. The Board does not find Streator's lack of commitment to build the VLR a reason to prohibit a limited variance. The VLR may not be necessary if the belt filter press successfully handles the plant's sludge issues. Also, if Red Wing decreases their loading, as is expected, the VLR may not be necessary for the plant to operate within its organic loading capacity.

Hardship

Based on the economic arguments presented by Streator, the Board finds that inability to connect the strip mall and motel to the sewer system would constitute a hardship upon Streator. The Board agrees with the Agency that the hardship is not arbitrary. The Agency made an effort to communicate with Streator prior to putting Streator on restricted status.

The Board does find, however, that it would be unreasonable not to allow the strip mall and motel to connect to the plant. The Agency stated in its brief that if Streator had identified the strip mall and the motel at the time of the restricted status discussion, the Agency, in all likelihood, would have granted those projects an exemption from the restricted status determination. Therefore, although placing Streator on restricted status was not arbitrary, denying sewer hookups to the strip mall and the motel would be unreasonable. It would have been preferable if Streator had asked the Agency for an exemption to get the strip mall and motel sewer hookups. However, the Agency's admission that it probably would have provided the

exemption makes denying the hookups at this point unreasonable. As is discussed below, the environmental impact of the two hookups would be minimal.

As regards the Agency's contention that the hardship is self-imposed, the Board finds that Streator's hardship is not self-imposed. Streator's loss of tax revenue and jobs, the window of development opportunity, the variable production at Red Wing, and the shorter-than-expected plant design life are beyond Streator's direct control. Normally, consequences of variance denial such as the loss of job opportunities, city income and taxes, and the loss of sales and enhanced property taxes, are considered merely the expected consequences of restricted status, and do not, by themselves, constitute arbitrary or unreasonable hardship. Willowbrook Motel v. PCB, PCB 81-149, 53 PCB 007, (July 14, 1983); *affirmed in Willowbrook Motel v. PCB*, 135 Ill.App.3d 343, 481 N.E.2d 1032 (1st Dist. 1985) (emphasis added.) However, if the claimed hardship outweighs a nominal injury to the public or the environment, the Board can find that an arbitrary or unreasonable hardship would result. Marathon Oil Company v. IEPA and PCB, 242 Ill. App. 3d 200, 610 N.E.2d 789 (5th Dist. 1993).

Environmental Considerations

The Board finds that the environmental impact of the two additional sewer hookups would be minimal. The Agency exempted certain connections from the prohibition on new sewer connections. The Agency's exceptions to the restricted status allow additional organic loading to the plant despite its determination that additional loading will cause a violation of the Act. By Streator's estimate, these excepted connections would add at least 123 pounds of BOD₅/day to the organic loading at the plant. The instant variance request for an additional exception for the motel and strip mall would add approximately 8 pounds of BOD₅/day.

Streator's professional engineer testified that the environmental impact from the additional organic loading of 8 pounds of BOD₅/day from the motel and strip mall compared to the current loading of 6,300 pounds of BOD₅/day would be an amount that could not be measured in terms of the additional load on the receiving stream or land application. The additional volume of discharge, about 5,000 gallons out of approximately 3 million gallons/day, would also be negligible. The Agency presented no opposing information to this. The Board finds that increased loading to the environment would be an increase whose effects would be too small to measure.

CONSISTENCY WITH FEDERAL LAWS

Since the Board would not be granting a variance of Streator's permitted effluent limits, granting a variance would be consistent with the Federal Clean Water Act and Streator's NPDES permit.

CONCLUSION

Based on the above findings the Board finds that Streator's hardship outweighs the environmental impact of the variance and finds the hardship unreasonable. The Board grants a variance as explained below.

Today's action is solely a grant of variance from restricted status for the purposes of allowing sewer connections for the Kroger strip mall and the Super 8 Motel, and does not insulate Streator from an enforcement action by the Agency for exceeding its permitted design loading or effluent limits. Streator is not granted a variance for any other reason.

This opinion constitutes the Board's findings of fact and conclusions of law.

ORDER

The Board hereby grants petitioner, City of Streator, variance from the restricted status provision of 35 Ill. Adm. Code 306.402, solely to allow the Super 8 Motel and the Kroger strip mall to connect to Streator's sewage treatment plant. The variance lasts until January 10, 2006, to accommodate the Agency's guidelines for Streator to provide 12 months of operating data.

The data will show effluent compliance once improvements to the plant are made and allow the Agency to rerate the plant.

IT IS SO ORDERED.

If petitioner chooses to accept this variance, within 45 days after the date of this opinion and order, petitioner shall execute and forward to:

Deborah J. Williams
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue
P.O. Box 19276
Mail Code #21
Springfield, Illinois 62794-9276

a certificate of acceptance and agreement to be bound by all the terms and conditions of the granted variance. The 45-day period shall be held in abeyance during any period that this matter is appealed. Failure to execute and forward the certificate within 45 days renders this variance void. The form of the certificate is as follows:

CERTIFICATE OF ACCEPTANCE

The City of Streator accepts and agrees to be bound by all terms and conditions of the Pollution Control Board's January 10, 2002 order in PCB 02-4.

Petitioner

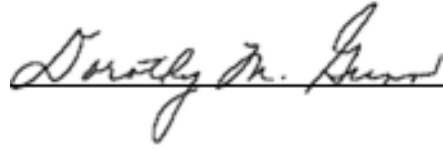
Authorized Agent

Title

Date

Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the order. 415 ILCS 5/41(a) (2000); *see also* 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706. Illinois Supreme Court Rule 335 establishes filing requirements that apply when the Illinois Appellate Court, by statute, directly reviews administrative orders. 172 Ill. 2d R. 335. The Board's procedural rules provide that motions for the Board to reconsider or modify its final orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520; *see also* 35 Ill. Adm. Code 101.902, 102.700, 102.702.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on January 10, 2002, by a vote of 6-0.

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

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board