

ILLINOIS POLLUTION CONTROL BOARD
April 20, 1995

GLENBARD WASTEWATER AUTHORITY,)
)
Petitioner,)
)
v.) PCB 95-49
) (Variance - Water, NPDES)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

OPINION AND ORDER OF THE BOARD (by E. Dunham):

This matter comes before the Board on Glenbard Wastewater Authority's (Glenbard) February 9, 1995 petition for variance. Glenbard seeks a variance from the effluent limit for total suspended solids (TSS). The limit for TSS is found at 35 Ill. Adm. Code 304.124. A limit for TSS is also contained in the NPDES permit issued to Glenbard. Glenbard requests a six-month variance to allow reconstruction of the wastewater filter system. On March 20, 1995, the Illinois Environmental Protection Agency (Agency) filed its recommendation, recommending that the requested variance be granted with conditions. Glenbard waived hearing and none was held.

The Board's responsibility in this matter arises from the Environmental Protection Act (Act) (415 ILCS 5/1 et seq. (1992)). The Board is charged therein with the responsibility to "grant individual variances beyond the limitations prescribed in this Act, whenever it is found upon presentation of adequate proof, that compliance with any rule or regulation, requirement or order of the Board would impose an arbitrary or unreasonable hardship". (415 ILCS 5/35(a) (1992).) More generally, the Board's responsibility in this matter is based on the system of checks and balances integral to Illinois environmental governance: the Board is charged with the rulemaking and principal adjudicatory functions, and the Agency is responsible for carrying out the principal administrative duties.

The Board finds that Glenbard has presented adequate proof that immediate compliance with the regulation involved would result in the imposition of an arbitrary or unreasonable hardship. Therefore, the variance is granted, subject to the conditions set forth in the order below.

BACKGROUND

Glenbard is a joint agency of the Villages of Glen Ellyn and Lombard in Du Page County, Illinois. (Pet. at 2.) Glenbard operates a sewage treatment plant for the treatment of domestic and industrial wastewater. (Pet. at 2.) The plant is located in

Glen Ellyn and employs 33 people. (Pet. at 2.) The plant has operated continuously since December 10, 1974. (Pet. at 2.) The plant has a design average flow of 16.02 MGD and a design maximum flow of 47.0 MGD. (Pet. at 2.) The plant currently discharges approximately 12 MGD into the East Branch of the Du Page River. (Pet. at 2.)

The plant uses sand filters and an underlying clear well for filtration of effluent to attain pertinent NPDES permit limits for suspended solids. (Pet. at 2.) The sand filters consist of ten 18 ft. x 37 ft. x 10 ft. deep steel structures with 10 inches of sand media. (Pet. at 4.) Glenbard's NPDES permit contains the following limits for TSS:

PARAMETER	LOAD LIMITS lbs/day DAF (DMF)		CONCENTRATION LIMITS MG/l	
	MONTHLY AVG.	DAILY MAX	MONTHLY AVG.	DAILY MAX
TSS	1,603 (4,704)	3,206 (9,407)	12	24

The limits of the NPDES permit are more restrictive than those specified in Section 304.124. (Pet. at 2.) The sand filters at the plant are beginning to fail and are in need of extensive reconstruction or replacement. (Pet. at 2.) Glenbard has determined that the most cost effective means of repair is to replace the existing filters housed in steel with new filters housed in concrete. (Pet. at 2.) Under this plan the existing clear well would be abandoned and its function replaced with a newly installed ultraviolet light disinfection chamber. (Pet. at 2.)

During the removal and replacement of the sand filters, the plant's effluent would not be filtered. (Pet. at 3.) Petitioner anticipates that the filtration system would be bypassed for up to six months. (Pet. at 3.)

COMPLIANCE PLAN

A variance is a temporary reprieve from compliance with the Board's regulations. Compliance is to be sought regardless of the hardship which the task of eventual compliance presents an individual polluter. (Monsanto Co. v. IPCB (1977), 67 Ill.2d 276, 367 N.E.2d 684.) Accordingly, except in certain special circumstances, a variance petitioner is required, as a condition to grant of variance, to commit to a plan which is reasonably calculated to achieve compliance within the term of the variance.

During the proposed removal and replacement of the sand filters, the numerical standard for suspended solids will not be

met consistently. (Pet. at 6.) Glenbard will attempt to meet the suspended solid standard during the reconstruction period by adding polymer to the clarifier. (Pet. at 6.) However, compliance during this period with the suspended solids standard cannot be assured even with the addition of polymers. (Pet. at 6.) Glenbard has included interim suspended solids discharge limitations which can be achieved during the bypass period in the petition. (Pet. at 9.) The Agency has included these interim limits in the recommendation. (Ag. Rec. 3.) After the completion of the replacement of the filters, the effluent from the plant will meet the suspended solids limitation found in Glenbard's NPDES permit.

HARDSHIP

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) (1992).) Furthermore, the burden is upon 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. IPCB (1985), 135 Ill. App.3d 343, 481 N.E.2d 1032.) Only with such a showing can the claimed hardship rise to the level of arbitrary or unreasonable hardship.

Further deterioration of the sand filters at Glenbard will hinder the ability of Glenbard to meet the TSS limits in its NPDES permit. (Ag. Rec. at 2.) The sand filters need to be repaired or replaced to prevent further deterioration. (Ag. Rec. at 2.) One way to comply with the applicable suspended solid limits during renovation of the sand filters is to construct a new filter system separate from the existing system. (Pet. at 9.) This method would allow Glenbard to remain in compliance with the TSS limit. (Pet. at 9.) The petitioner estimates the cost of this option at \$4,791,144 which is more than double the cost of the option preferred by Glenbard. (Pet. at 9.) The other construction options studied by Glenbard include retrofitting the filter components and bypassing the filters during a portion of the reconstruction period. (Pet. at 9.) The two options differ as to the type of components used in the filters. One option retrofits the filters with Hydroclear Components while the other option uses General Filter Components. (Table 33 of Pet.) Petitioner claims that none of the options would result in an adverse environmental impact. (Pet. at 9.)

Glenbard states that the proposed method of retrofitting the filters with General Filter Components and bypassing the filtration process is the preferred option because this option is the most cost effective. (Pet. at 9.) The bypass of the filtration system would occur four months after the start of

construction and last for a period of six months. (Pet. at 4.) Glenbard will attempt to meet suspended solid standards during the bypass period by adding polymer to the final clarifier. (Pet. at 6.) Glenbard intends to begin construction in September of 1995. (Fig. 1 of Pet.) However, approval of Glenbard's loan application and construction permit are pending. (Pet. at 8.) The Agency agrees that this is the best option available. (Ag. Rec. at 2.)

ENVIRONMENTAL IMPACT

The suspended solids in the plant's wastewater flow consist primarily of non-volatile, non-biodegradable ash which has no biological impact on the receiving waters. (Pet. at 7.) Petitioner claims that an increase in the suspended solids during the bypass period will have no significant impact on the quality of the receiving water and will not violate the Board's water quality standards during the bypass period. (Pet. at 7.) The Agency agrees that the environmental impact will be minimal. (Ag. Rec. at 3.)

CONSISTENCY WITH FEDERAL LAW

Both the Agency and Glenbard state that a grant of the requested relief is consistent with federal law. (Pet. at 10; Ag. Rec. at 3.)

CONCLUSION

Based upon the record, the Board finds that immediate compliance with the standard for TSS would impose an arbitrary or unreasonable hardship on Glenbard. The Board finds that the granting of the variance from the TSS limit for a six month period will not result in an adverse environmental impact on the receiving water. In addition, Glenbard will be able to return to compliance with the TSS limit upon the completion of the replacement of the filter housings.

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

ORDER

Glenbard Wastewater Authority is hereby granted a variance for its Glen Ellyn wastewater treatment plant from 35 Ill. Adm. Code 304.124 and the total suspended solid limit contained in its NPDES permit subject to the following conditions:

- a. This variance shall begin when the sand filters are removed from service and shall continue until the sand filters are returned to service or for a period of six months, whichever

occurs first but no later than September 1, 1996

- b. During the variance period, the effluent discharged shall meet the following TSS limits:

PARAMETER	LOAD LIMITS lbs/day DAF (DMF)		CONCENTRATION LIMITS MG/l	
	MONTHLY AVG.	DAILY MAX	MONTHLY AVG.	DAILY MAX
TSS	2,672 (7,840)	6,012 (17,639)	20	45

- c. During the variance period, Glenbard shall operate its wastewater treatment facility in such a manner that it will produce the best effluent practicable. Additionally, Glenbard shall perform the necessary repair work on the sand filters as expeditiously as possible to minimize the period of time that the filters need to be out of service.
- d. Glenbard shall notify Maureen Brehmer of the Agency's Maywood office via telephone at (708) 338-7900 when the construction phase begins and ends. In addition, written confirmation of each notification shall be sent within five (5) days to the following address:

Illinois Environmental Protection Agency
BOW, Compliance Assurance Section
2200 Churchill Road, P. O. Box 19276
Springfield, IL 62794-9276
Attention: Dan Ray

Within forty-five (45) days of the date of the Board's final order, Glenbard shall execute the certificate of acceptance and agreement to be bound to all of the terms and conditions of the variance (see attached). This executed agreement shall be forwarded to:

Margaret P. Howard
Illinois Environmental Protection Agency
Division of Legal Counsel
2200 Churchill Road
Post Office Box 19276
Springfield, IL 62794-9276

The forty-five (45) day period shall be held in abeyance during any period that this matter is being appealed. Failure to execute and forward this certificate in a timely fashion shall render the variance null and void.

CERTIFICATION

I (We), _____, hereby accept and agree to be bound by all terms and conditions of the Pollution Control Board's April 20, 1995 order in PCB 95-49.

Petitioner

Authorized Agent

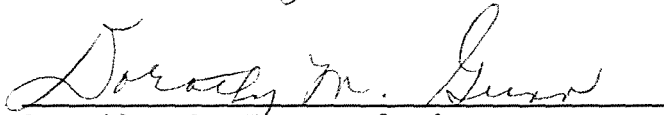
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Date

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act, (415 ILCS 5/41 (1992)), provides for appeal of final orders of the Board within 35 days of the date of service of this order. The Rules of the Supreme Court of Illinois establish filing requirements. (See also 35 Ill. Adm. Code 101.246, Motion for Reconsideration.)

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the 20th day of April, 1995, by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board