

ILLINOIS POLLUTION CONTROL BOARD  
September 3, 1992

AMOCO OIL COMPANY,	)	
(Creve Coeur Terminal),	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 91-10
	)	(Variance)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

JAMES D. PICKETT APPEARED ON BEHALF OF PETITIONER;

CHARLES M. FEINEN APPEARED ON BEHALF OF RESPONDENT.

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

This matter comes before the Board on the January 18, 1991 filing by petitioner, Amoco Oil Company ("Amoco"), of a petition for variance ("Pet."). Amoco seeks variance from the dissolved iron standard of 35 Ill. Adm. Code 302.208(e) and from the water quality standard contained in 35 Ill. Adm. Code 302.203 concerning unnatural color or turbidity caused by iron coloration.

From early 1991 into 1992 Amoco and the Illinois Environmental Protection Agency ("Agency") held consultations regarding the manner in which the subject matter of this variance request might be best handled. Pursuant thereto, on June 10, 1992, the Agency filed a variance recommendation ("Rec.") recommending that variance be granted subject to the condition that Amoco follow a compliance schedule as submitted with the Agency's recommendation.

Hearing was held July 29, 1992 in Pekin, Illinois. Amoco noted its acceptance of the conditions recommended by the Agency (Tr. at 5); no testimony was given and no members of the public attended the hearing.

As presented below, the Board finds that Amoco has met its burden of demonstrating that denial of variance would impose an arbitrary or unreasonable hardship. Accordingly, the variance request is granted.

BACKGROUND

Amoco owns and operates a terminal for the storage and distribution of petroleum products in Creve Coeur, Illinois. The terminal is located on approximately 15.2 acres in an industrial

0135-0487

area approximately one-quarter mile east of the Illinois River. Lux Creek, a small, 1.35 square mile tributary of the Illinois River, flows through and adjacent to the terminal; it is an intermittent stream. (Pet. at 3.)

Since approximately 1989, Amoco has been involved in the construction of a series of groundwater monitoring wells and a groundwater recovery system, the purpose of which is to clean up subsurface contamination caused by petroleum products. (Pet. at 3.) The recovered groundwater is treated to remove the petroleum constituents, and the treated groundwater is discharged to Lux Creek through two permitted outfalls.

The treated groundwater contains iron. The regulations of the Board at 35 Ill. Adm. Code 302.208(e) provide, in pertinent part, that except for waters within which mixing is allowed, in-stream concentrations of dissolved iron may not exceed 1.0 mg/l<sup>1</sup>. Mixing is not allowed in Lux Creek, because it is an intermittent stream. (See 35 Ill. Adm. Code 302.102.)

Additionally, the regulations of the Board at 35 Ill. Adm. Code 302.203 provide, in pertinent part, that Waters of the State must be free of color and turbidity of other than natural origin. Presently, visible color has been noted by Agency personnel in downstream Lux Creek. (Rec. at ¶ 2.) The Agency speculates, reasonably, that the color is due to post-discharge oxidation of dissolved iron contained in the treated groundwater.

Amoco and the Agency agree that this matter be addressed by relocating the discharges to the Illinois River. The Illinois River is not subject to the same mixing limitation as is Lux Creek. However, the Agency notes that whether visible color will result in the Illinois is speculative (Rec. at ¶ 2), and that determination whether there would be any violation resulting from the discharge into the Illinois River is premature (Rec. at ¶ 3).

The requested variance is for the time required to construct the Illinois River outfall. The Agency and Amoco have agreed upon a compliance schedule that would have the project completed by October 1, 1992. (Rec. at ¶ 8.)

#### HARDSHIP

The Agency asserts that there will be minimal environmental impact or no impact at all to Lux Creek during the period of the variance. (Rec. at ¶ 20.) The Agency observes that actual

---

<sup>1</sup> Concentration of dissolved iron in the two permitted effluents is variable, as reported: <0.02 mg/l to 4.0 mg/l in one of the discharges (Rec. at Exh. B) and 0.04 mg/l to 1.6 mg/l in the second (Rec. at Exh. C).

exceedences of the 1.0 mg/l dissolved iron standard in Lux Creek have been few, and that during the short term of the variance there is a chance that the discharges will not even exceed the 1.0 mg/l standard. (Rec. at ¶ 17.) Moreover, the Agency asserts that the time required to install iron removal equipment would be longer than that required to relocate the outfalls, thus allowing for greater potential harm to be done to Lux Creek. (Rec. at ¶ 20.

For these reasons the Agency contends that denial of the requested variance would constitute an arbitrary or unreasonable hardship.

#### CONCLUSION

Based upon the record before it, the Board finds that immediate compliance with the regulations at issue would impose an arbitrary or unreasonable hardship on Amoco. The requested variance accordingly will be granted, subject to the conditions recommended by the Agency and acceded to by Amoco.

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

#### ORDER

Petitioner, Amoco Oil Company, is hereby granted variance from 35 Ill. Adm. Code 302.203 and 302.208(e), as these pertain to dissolved iron, color, and turbidity, for the discharges at its Creve Coeur terminal to Lux Creek pursuant to NPDES Permit No. IL0004880 and No. IL0067563, subject to the following conditions:

- (1) This variance shall terminate on October 1, 1992.
- (2) During the term of this variance the concentration of total iron from either of the two discharges shall not exceed 10 mg/l daily maximum and 7 mg/l monthly average.
- (3) Petitioner shall follow the ~~agreed-upon~~ compliance schedule ~~as attached to the Agency Recommendation of June 10, 1992 and incorporated by reference as through fully set forth herein,~~ and complete the project by October 1, 1992.
- (4) Petitioner shall apply for and receive any applicable permits from the Agency prior to beginning construction.
- (5) Petitioner shall report to the Peoria Regional Office of the Illinois Environmental Protection Agency by phone when the various stages of the compliance schedule are started and completed. A written confirmation of the

0135-0489

notification shall be sent to the following address within five (5) days thereafter:

Illinois Environmental Protection Agency  
Division of Water Pollution Control  
Compliance Assurance Section  
2200 Churchill Road  
P.O. Box 19276  
Springfield IL 62794-9276  
Attn: Roger Callaway

Within 45 days of the date of this Order, Petitioner shall execute and forward to Charles Feinen, Division of Legal Counsel, Illinois Environmental Protection Agency, 2200 Churchill Road, Post Office Box 19276, Springfield, Illinois 62794-9276, a Certification of Acceptance and Agreement to be bound to all terms and conditions of this variance. The 45-day period shall be held in abeyance during any period that this matter is being appealed. Failure to execute and forward the Certificate within 45 days renders this variance void and of no force and effect as a shield against enforcement of rules from which variance was granted. The form of said Certification shall be as follows:

CERTIFICATION

I (We), \_\_\_\_\_,  
hereby accept and agree to be bound by all terms and conditions of the order of the Pollution Control Board in PCB 91-10, September 3, 1992.

\_\_\_\_\_  
Petitioner

\_\_\_\_\_  
Authorized Agent


\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

Section 41 of the Environmental Protection Act, Ill. Rev. Stat. 1991, ch. 111½, par. 1041, provides for appeal of final orders of the Board within 35 days. The Rules of the Supreme Court of Illinois establish filing requirements. (But see also 35 Ill. Adm. Code 101.246, Motions for Reconsideration, and Castenada v. Illinois Human Rights Commission (1989), 132 Ill.2 304, 547 N.E.2d 437.)

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the 3rd day of September, 1992, by a vote of 7-0.

  
\_\_\_\_\_  
Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board