

ILLINOIS POLLUTION CONTROL BOARD
January 20, 1994

CITIZENS UTILITIES COMPANY)	
OF ILLINOIS,)	
)	
Petitioner,)	
)	
v.)	PCB 85-95
)	(Variance)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

OPINION AND ORDER OF THE BOARD (by C.A. Manning):

This matter comes before the Board pursuant to a remand by the Appellate Court of Illinois, Third District. On October 1, 1992, the Appellate Court entered a final "not to be published" opinion and order in case No. 3-91-0973 ("Citizens IV"). The mandate issued on October 26, 1992. The Appellate Court affirmed in part, vacated in part and remanded this Board's final opinions and orders of October 24, 1991 and December 6, 1991. Accordingly, pursuant to the mandate of the Appellate Court, we grant the following relief:

Citizens Utilities Company is hereby granted a variance consistent with the Appellate Court's final opinions and orders in the following two decisions: Citizens Utilities Company of Illinois v. Illinois Pollution Control Board, Illinois Environmental Protection Agency and the Village of Bolingbrook, (October 1, 1992) No. 3-91-0973 ("Citizens IV"), Third District and Citizens Utilities Company of Illinois v. Illinois Pollution Control Board, (3rd Dist. 1991) 213 Ill.App.3d 864, 572 N.E.2d 373 ("Citizens III").

ORDER

Citizens Utilities Company of Illinois is granted a variance from 35 Ill. Adm. Code 302.206, 304.120(c), 304.301, and 304.105, only as it applies to the ammonia nitrogen water quality standard of 35 Ill. Adm. Code 302.212, subject to the following conditions:

1. The initial phase of this variance became effective on July 2, 1985 and expired on July 2, 1990.
2. The Board hereby grants a variance extension which became effective on July 3, 1990 and which shall expire on July 2, 1995.

3. Pursuant to the Appellate Court's mandate in Citizens IV, Citizens Utilities Company shall be entitled to an automatic extension of the variance beyond July 2, 1995 in the event that the relief sought by Citizens Utilities Company in R81-19 is denied by the Board. Such extension shall be for a period of three years beyond the date of the Board's final opinion and order in R81-19. (Citizens IV, Slip Op. at 6-7.) Should the automatic extension become necessary, Citizens Utilities Company shall file a request that such extension issue on or before May 2, 1995 and indicate whether the full, three-period will be required.

If the relief in R81-19 is denied, the compliance schedule set forth in this Board's final opinion and order in PCB 78-313, shall be extended in accordance with the Appellate Court's mandate in Citizens IV and Citizens III. The deadlines for permit application, commencement of work, and compliance with applicable effluent limitations would be six months, one year, and three years, respectively, after final adjudication of R81-19.

4. Pursuant to the Appellate Court's mandate in Citizens IV, in the event that the relief sought in R81-19 is granted, this variance shall expire upon the date R81-19 is to take effect.
5. Pursuant to the Appellate Court's mandate in Citizens IV, in the event that it is unlikely R81-19 will be resolved on or before July 2, 1995, Citizens Utilities Company shall be entitled to an automatic extension of the variance. Such extension shall also be available in five year increments. Should an automatic extension under this paragraph become necessary, Citizens Utilities Company shall file a request that such extension issue on or before May 2, 1995, and indicate the time period requested for the variance extension.
6. This variance applies to effluent discharges from Petitioner's West Suburban Waste Water Treatment Plant No. 1 ("WSB Plant No. 1") located at the intersection of Glengary Drive and Briarcliff Road in the Village of Bolingbrook.
7. Petitioner shall meet the following interim effluent limitations for five day biochemical oxygen demand ("BOD₅"), total suspended solids ("TSS"), and ammonia nitrogen measured as N.

	<u>Monthly Average</u>	<u>Flow-weighted Daily Composite (Maximum)</u>
BOD ₅	20 mg/l	40 mg/l
TSS	25 mg/l	50 mg/l
Ammonia Nitrogen	15 mg/l	30 mg/l

8. Petitioner shall assure that Lily Cache Creek, for a distance of eight miles downstream of the point of discharge of WSB Plant No. 1, meets a water quality standard for ammonia nitrogen of no greater than 15 milligrams per liter ("mg/L").
9. Petitioner shall assure that Lily Cache Creek, for a distance of eight miles downstream of the point of discharge of WSB Plant No. 1, shall meet a water quality standard for dissolved oxygen of no less than 4 mg/L.
10. Petitioner shall be exempt from the ammonia nitrogen and dissolved oxygen water quality standards when creek flow is less than 4.9 million liters per day or 2 cubic feet per second ("cfs").
11. Petitioner shall operate WSB Plant No. 1 in such a manner as to minimize the total quantities of BOD₅, TSS, and ammonia nitrogen discharged, consistent with applicable NPDES permit and variance effluent limitations.
12. Petitioner shall on a continuous basis monitor the flow that is diverted from WSB Plant No. 1 to the polishing pond and the flow diverted to WSB Plant No. 2. Petitioner shall keep in operating condition flow meters necessary to perform this monitoring. Records of these flows shall be maintained for the period of this variance. Flow results shall be submitted to the Agency on a monthly basis at the same time as and together with the discharge monitoring reports required by its NPDES permit.
13. The Agency, pursuant to 35 Ill. Adm. Code 309.184, shall modify NPDES permit IL0032727 consistent with the conditions set forth in this Order.
14. Within forty-five days of the date of this Order, Petitioner shall execute and forward to the Illinois Environmental Protection Agency, Compliance Assurance Section, Division of Water Pollution Control, 2200 Churchill Road, Springfield, Illinois 62794-9276, a Certificate of Acceptance and Agreement to be bound to all terms and conditions of this variance. This forty-five day period shall be held in abeyance for any period this matter is being appealed. The form of the Certificate shall be as follows:

CERTIFICATION

I, (We), _____, having read the Pollution Control Board Final Opinion and Order of January 20, 1994, in PCB 85-95 which was issued upon remand from the Appellate Court, Third District (October 1, 1992) in Case No. 3-91-0973, hereby voluntarily agree to be bound by all of its terms and conditions.

SIGNED

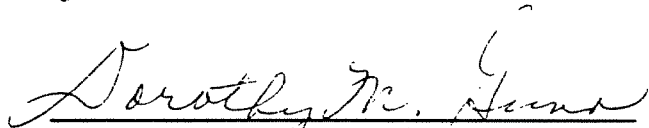
TITLE

DATE

IT IS SO ORDERED.

Board Member R.C. Flemal abstained.

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 January, 1994, by a vote of 6-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board