

ILLINOIS POLLUTION CONTROL BOARD  
October 3, 1996

GLENBARD WASTEWATER AUTHORITY,	)	
	)	
	)	
Petitioner,	)	PCB 97-27
	)	(Variance - Water, NPDES)
v.	)	
	)	
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) August 5, 1996 petition for variance.<sup>1</sup> Glenbard seeks an extension of the variance granted in PCB 95-49 on April 20, 1995 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 modified and reissued to Glenbard on August 3, 1993. Glenbard requests an extension of the six-month variance for an additional seven months, until May 1, 1997 to allow reconstruction of the wastewater filter system. On September 9, 1996 the Illinois Environmental Protection Agency (Agency) filed its recommendation, recommending that the requested variance be granted with conditions. On September 12, 1996 Glenbard filed a motion for final action stating that it had no objection to the conditions recommended by the Agency. Glenbard waived hearing and no requests for a hearing were received from the public, therefore, no hearing was held.

The Board's responsibility in this matter arises from the Environmental Protection Act (Act) (415 ILCS 5/1 et seq. (1994)). 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) (1994).) 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.

---

<sup>1</sup> Petitioner's initial filing was entitled a "Motion for Modification of Time Period for Existing Variation for Suspended Solids" and was filed under docket number PCB 95-49. The Board construed the filing as a new variance petition and issued a new docket number.

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 recommended by the Agency and 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 1.) Glenbard operates a sewage treatment plant for the treatment of domestic and industrial wastewater. (Pet. at 1.) The plant is located in Glen Ellyn and has operated continuously subject to NPDES permits 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.) Glenbard's NPDES permit contains the following limits for TSS:

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

(Pet. at 3.)

The limits for TSS in Glenbard's NPDES Permit are more restrictive than the limits specified in 35 Ill. Adm. Code 304.124. (Pet. at 2.)

Glenbard's consulting engineers determined that the sand filters are failing and need extensive reconstruction or replacement. (Pet. at 2.) During the replacement of the filters the plant effluent is not being filtered and the TSS limits cannot be consistently met. (Pet. at 2.) Glenbard sought and received a variance from the TSS limits during the construction period. (See Glenbard Wastewater Authority v. IEPA (April 20, 1995), PCB 95-49.) It was anticipated that filtration bypass would take six months and the variance was granted for a six month period but was not to extend beyond September 1, 1996. The removal and replacement of the sand filters commenced on February 1, 1996. (Pet. at 2.)

The variance granted to Glenbard on April 20, 1995 in PCB 95-49 provided the following limits for TSS for a six month period following the removal of the sand filters:

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

Glenbard had originally planned to demolish the existing filters in phases allowing for some filtration through remaining filters while others were being replaced. (Pet. at 5.) Under this plan the project would be done over an eighteen month period but the filters would be bypassed for only six months. (Pet. at 5.) However changes were made to the schedule in order to lower the cost of the project. (Pet. at 5.) Under the revised plan all filters would be taken out of service at the same time and the length of the project would be shortened to 13 months. (Pet. at 6.) This shortened schedule contributed to a savings of over \$300,000 on the project. (Pet. at 6.)

#### 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, consistent compliance with the numerical standard for suspended solids cannot be assured. (Pet. at 2.) Glenbard will attempt to meet the suspended solid standard during the reconstruction period by adding polymer to the clarifier. (Pet. at 5.) However, compliance during this period with the suspended solids standard cannot be assured even with the addition of polymers. Glenbard has included interim suspended solids discharge limitations which can be achieved during the bypass period in the petition. (Pet. at 8.) The Agency has included interim limits in the recommendation. (Ag. Rec. 4.) 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.

#### 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 6.) 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 6 & 7.) The Agency agrees that the environmental impact will be minimal. (Ag. Rec. at 3.)

### 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) (1994).) 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.

To remain in compliance during the replacement of the filters, would require the replacement of the filters on a piecemeal basis. (Pet. at 8.) This would double the cost of the project along with increasing the time to completely replace all the filters. (Pet. at 8.) 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 8.) The Agency agrees that the ongoing work on the sand filters needs to be completed. (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 8; Ag. Rec. at 3.)

### RETROACTIVE RELIEF

As a general rule, in the absence of unusual or extraordinary circumstances, the Board renders variances as effective on the date of the Board order in which they issue. (LCN Closers, Inc. v. EPA (July 27, 1989), PCB 89-27, 101 PCB 283, 286; Borden Chemical Co. v. EPA (Dec. 5, 1985), PCB 82-82, 67 PCB 3,6; City of Farmington v. EPA (Feb. 20, 1985), PCB 84-166, 63 PCB 97, 98; Hansen-Sterling Drum Co. v. EPA (Jan. 24, 1985), PCB 83-240, 62 PCB 387, 389; Village of Sauget v. EPA (Dec. 15, 1983), PCB 83-146, 55 PCB 255, 258; Olin Corp. v. EPA (Aug 30, 1983), PCB 83-102, 53 PCB 289, 291.)

A variance is not retroactive as a matter of law, and the Board does not grant variance retroactively unless retroactive relief is specially justified.

Deere & Co. v. EPA, (Sept. 8, 1988) PCB 88-22, 92 PCB 91, 94 (citations omitted).

Absent a waiver of the statutory due date, Section 38(a) of the Environmental Protection Act requires the Board to render a decision on a variance within 120 days of the filing of a petition. (415 ILCS 5/38.5) (1994).) For this reason, a petitioner that wishes a variance to commence by a certain date must file its petition at least 120 days prior to the

desired inception date. (EPA v. Citizens Utilities Co. of Illinois (Jan. 12, 1984), PCB 79-142, 56 PCB 1, 4.)

The Board finds that retroactive relief is appropriate because the circumstances surrounding the filing of this petition present an unusual situation. This variance is an extension of a previously granted variance where additional time was needed due to changes in the construction plan. The Board also notes that the retroactive portion of the variance is only for a short time period.

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 extending the variance from the TSS limit for an additional seven 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 in this matter.

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 on August 1, 1996 and shall continue until the sand filters are returned to service or through May 1, 1997, whichever occurs first.
- b. During the variance period, the effluent discharged shall meet the following TSS limits:

PARAMETER	LOAD LIMITS lbs/day		CONCENTRATION LIMITS MG/L	
	DAF	(DMF)	MONTHLY	DAILY
	MONTHLY	DAILY	AVG.	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

IT IS SO ORDERED.

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. 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 October 3, 1996 order in PCB 97-27.

\_\_\_\_\_  
Petitioner

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

\_\_\_\_\_  
Title

---

Date

Section 41 of the Environmental Protection Act (415 ILCS 5/41 (1994)) provides for the appeal of final Board orders 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 "Motions 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 \_\_\_\_ day of \_\_\_\_\_, 1996, by a vote of \_\_\_\_\_.

---

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board