## ILLINOIS POLLUTION CONTROL BOARD October 24, 1972

NORTH SHORE SA	ANITARY	DIST	RICT	)	W=0.26=
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ENVIRONMENTAL	PROTECT	rion	AGENCY	)	

OPINION AND ORDER OF THE BOARD (BY SAMUEL T. LAWTON, JR.)

On April 17, 1972 and May 22, 1972, the North Shore Sanitary District wrote to the Illinois Environmental Protection Agency preliminary to application for permits with respect to its Clavey Road, Waukegan and Gurnee sewage treatment plants, inquiring whether the so-called "Pfeffer exception" applicable to biochemical oxygen demand (BOD<sub>5</sub>) and suspended solids (SS) limits would be available to the District as to effluent discharges of the foregoing plants. In simple terms, the Pfeffer exception found in Rule 404(f)(ii) of the Water Regulations (Illinois Pollution Control Board Rules and Regulations, Chapter 3, Water Pollution) permits the stated effluent limits of 4 MG/L of BOD5 and 5 MG/L of SS, where applicable, to be eased to 10 and 12, respectively, when the required showing has been made to the Agency that such effluent will meet the standards provided in Rule 404(f)(ii) with particular respect to not causing a violation of applicable Water Quality Standards and not creating an unfavorable dissolved oxygen condition.

Because of the provisions of our March 31, 1971 Opinion and Order in case entitled League of Women Voters, et al v. North Shore Sanitary District, #70-7, directing 4 and 5 limits for BOD and SS, respectively, at the Clavey Road plant, the Environmental Protection Agency responded to the District's inquiry on July 31, 1972 that our March 31, 1971 Order was controlling and that the Pfeffer exception would not be available to the Clavey Road plant, although it would be to the Waukegan and Gurnee plants.

The North Shore Sanitary District filed a proceeding with us which we docketed as an appeal pursuant to Section 40 of the Environmental Protection Act, on the basis that the Environmental Protection Agency's response to the District's inquiry was tantamount to a statement that a permit application as to the Clavey Road plant seeking the 10-12 limits would be denied, even if the requisite showing could be made. We decide the case accordingly.

While a hearing was held on the District's petition, the issue presented is solely one of law. We sustain the North Shore Sanitary District's appeal, reversing the ruling of the Environmental Protection Agency and hold that the Pfeffer exception is available to the North Shore Sanitary District in the operation of its Clavey Road plant. In doing so, we do not hold by this decision that the Clavey Road plant is permitted to discharge up to 10 BOD5 and 12 SS limits, but only that the District is not foreclosed by our March 31, 1971 Opinion from seeking the benefits of the Pfeffer exception upon a proper showing to the Environmental Protection Agency that will justify the relaxed limits. It will be up to the Environmental Protection Agency to determine whether the District has satisfied the Regulations as provided in our Rules, (supra), to entitle it to the 10-12 exception.

The adoption of the Pfeffer exception, in effect modified our March 31, 1971 Order to the extent applicable. Indeed, one of the motivations for the exception was the inordinate cost to which the North Shore Sanitary District might be subjected to meet tertiary treatment requirements without any notable corresponding improvement in the dissolved oxygen content in the receiving stream. See Opinion of March 7, 1972 in matter of Effluent Criteria and Water Quality Standards Revisions, #R70-8, R71-14, 3 PCB 755, 768. Our variance Order of January 31, 1972, North Shore Sanitary District v. Environmental Protection Agency, #71-343, 3 PCB 541, permitting an effluent of 20 BOD5 and 25 SS from the Clavey Road plant was a variance allowance available to the District during the period of construction and will expire on January 31, 1973. While this variance may be extended upon a proper showing, it does not alter the ultimate requirement of 4 BOD and 5 SS modified by the Pfeffer exception of 10 and 12, respectively, if applicable, which limits we require as the ultimate standard for the Clavey Road effluent when the plant is completed.

To qualify for the Pfeffer exception, Rule 404(f)(ii)(D) requires the submission of a project completion schedule prior to September 1, 1972. Since the District's inquiry to the Agency pre-dated the September 1, 1972 date, we hold that the District may pursue the Pfeffer exception notwithstanding the passage of the September 1, 1972 date if, in fact, it has not already submitted a completion schedule, providing a schedule is submitted within 35 days from this da

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

IT IS THE ORDER of the Pollution Control Board that the decision of the Environmental Protection Agency dated July 31, 1972 denying the North Shore Sanitary District the application of Rule 404(f)(ii) of the Illinois Pollution Control Board Rules and Regulations, Chapter 3 (Water Pollution) as to the Clavey Road plant, be reversed, and that the North Shore Sanitary District be entitled to the benefits of said Rule as to the Clavey Road plant upon a requisite showing of entitlement being made to the Environmental Protection Agency, in accordance with this order.

I, Christan Moffett, Clerk of the Illinois Pollution Control Board, certify that the above Opinion and Order was adopted on the  $\frac{24}{5}$  day of October, A. D. 1972, by a vote of  $\underline{5}$  to  $\underline{6}$ .

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