ILLINOIS POLLUTION CONTROL BOARD
March 22, 1971

DECATUR SANITARY DISTRICT	)	
	)	
v.	)	PCB #71-37
	)	
ENVIRONMENTAL PROTECTION AGENCY)		

Opinion and Order of the Board (by Mr. Currie):

The District asks a one-year extension of the SWB-14 timetable for construction of tertiary treatment facilities. The petition does not contain the information required by Board Procedural Rule 401, and it is dismissed.

The petition does not contain an adequate statement of the injury that would result to the public if the variance were granted. It is stated only that the requested extension "would not be injurious" and would not "reduce the present usefulness" of the receiving stream. Mere conclusions are not adequate; facts underlying the conclusion must be alleged. See City of Jacksonville v. EPA, #70-30 (Jan. 27, 1971). If the argument is that there is no need for tertiary treatment, that is contrary to the findings of the Sanitary Water Board in adopting the regulation. The District asks that the Environmental Protection Agency investigate the uses and quality of the river. It is the job of the petitioner, not of the Agency, to prove the case for a variance. What are needed are specific allegations as to the present uses and quality of the stream and any other facts the District believes relevant to its conclusion that a year's delay will not harm the public.

Moreover, there is no adequate allegation as to the reason the District has delayed so long getting started on this project. The tertiary treatment requirement has been on the books since 1967, and the District admits it was informed of the requirement that same spring, five years in advance of the scheduled date of completion. We have found in a related case that three years is ample time from conception to completion of sewage treatment facilities (Mississippi River Secondary Treatment Dates, #R70-3 (Feb. 3, 1971)). The District says it did not even hire a consultant to start work on the matter until October 1967 and that the consultant did not report until December 1969. Then the District applied for a federal grant. Its program was not "fully defined" until October 1970, three and a half years after the regulation was adopted. The drawing of plans was nevertheless postponed pending the outcome of state and local bond elections, and even now the submission of complete plans is not anticipated before January 1972. Plans were due 30 months before the completion date, or in January, 1970.

The District alleges that the proposed time schedule is "reasonable." If the regulation had been adopted in 1971, we would agree; two years is an acceptable timetable for design and construction of tertiary facilities of this size. But the regulation was adopted in 1967, and no reasons are given for the District's inaction for nearly four years. One cannot qualify for a variance simply by ignoring the timetable and starting late. While compliance within the remaining time may be impossible, any hardship suffered as a result is, so far as is alleged, due to the District's own inaction. To allow a variance on the basis of the present allegations would establish the preposterous proposition that the very existence of a violation is a ground for excusing it.

The petition does not meet the requirements of Rule 401, and even if all allegations in the petition are true they do not entitle the District to a variance (Rule 405 (b) (1)). For these reasons no hearing will be held, and the petition is dismissed. A new petition correcting the above deficiencies may be filed.

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

I, Regina E. Ryan, do hereby certify that the above opinion has been approved this 22nd. day of March, 1971.

REGINA E. RYAN
CLERK OF THE BOARD