

ILLINOIS POLLUTION CONTROL BOARD
January 20, 1994

ATLANTA MEADOWS, LTD. AND,)	
R.O.C.G.P. CORP. GENERAL PARTNER,)	
)	
Petitioner,)	
)	
v.)	PCB 93-72
)	(Variance)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

LEE R. CUNNINGHAM, KARIN-ANN SCHENGRUND OF GARDNER, CARTON, AND DOUGLAS, APPEARED ON BEHALF OF PETITIONER;

CHARLES W. GUNNARSON, APPEARED ON BEHALF OF RESPONDENT.

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

This matter is before the Board on an amended petition for variance filed by Atlanta Meadows Ltd. and R.O.C.G.P. Properties, Inc. (Atlanta) on July 19, 1993. Atlanta originally filed a petition for variance on April 15, 1993, but the Board found it deficient and directed Atlanta to file an amended petition correcting the deficiency. (Board order PCB 93-72, May 5, 1993). Atlanta filed the amended petition pursuant to Section 35(a) of the Environmental Protection Act (Act) and 35 Ill. Adm. Code Part 104 and 35 Ill. Adm. Code § 309.184. Atlanta is requesting variance from 35 Ill. Adm. Code § 304.120(c), Deoxygenating Waste, and 35 Ill. Adm. Code § 304.141(a), National Pollutant Discharge Elimination System (NPDES) permit Effluent Standards in order to continue to operate its waste water treatment plant (WWTP) for Mobet Meadows Mobile Home Park in Rock Island County, Illinois, while coming into compliance.

The Illinois Environmental Protection Agency (Agency) filed its recommendation that the variance petition be denied on October 19, 1993. Atlanta filed its response to the Agency recommendation on October 27, 1993. There was no hearing held in this matter.

For the reasons discussed below the Board finds, pursuant to Section 35(a) of the Act, Atlanta has presented adequate proof that immediate compliance with the Board regulations for which relief is being requested would impose an arbitrary or unreasonable hardship. Accordingly, the variance relief requested is granted subject to the conditions specified in the Board's order.

BACKGROUND

Atlanta is requesting variance until August 31, 1996 from 35 Ill. Adm. Code 304.120(c), which limits the effluent discharge from its WWTP to no more than 10 mg/l of biochemical oxygen demand (BOD₅) and 12 mg/l of total suspended solids (TSS), and from Section 304.141(a) to the extent that it requires Atlanta to comply with the terms of its NPDES permit for these constituents.¹

Atlanta's WWTP facility is situated in Rock Island County at 2507-214th Street North, Port Byron, Illinois. (A. Pet at 5.)² The area surrounding the unnamed tributary and the mobile home park is utilized for agricultural purposes. (Id.) Atlanta provides its mobile home units with private waste water facilities. (Id.) The existing WWTP consists of two activated sludge plants that have a combined capacity of 53,000 gallons per day (gpd). (Id. at 6.) The treated waste water is discharged to the unnamed tributary that is approximately one to two feet deep, during normal conditions, and is not used for any human activity, such as boating, fishing or swimming. (Id.) In addition, the tributary does not contain fish. (Id.) The unnamed tributary flows into Zuma Creek. (Id. at 7.) Zuma Creek flows into the Rock River 17 miles from its confluence with the Mississippi.

Atlanta states that the WWTP operates in compliance during normal flow conditions and only has difficulty in complying with its NPDES permit due to significant flows during and immediately after rainfall events. (A. Pet. at 9.) Atlanta further states "[t]he high flows associated with the rainfall events scour out the clarifiers and discharge solids to the receiving stream." (A. Pet. at 9.) Atlanta adds that "[a]s a result, the receiving stream has experienced sludge deposits and unnatural algae growth due to the inadvertent discharge of inadequately treated effluent." (A. Pet. at 9.) Atlanta states that it is out of compliance roughly 40% of the time. (Res. at 4.) The Agency agrees that the compliance problem is the result of rainfall events but states that Atlanta is out of compliance roughly 70% of the time. (Rec. at 4-5.)

Atlanta has attempted to address this situation by adding an equalization tank in an attempt to control the excessive flows. (A. Pet. at 7.) The tank has a 4,500 gallon capacity, and a valve on the effluent line used to control flow. (A. Pet. at 7.) The tank has not controlled the excessive discharges. Atlanta states

¹ While Section 304.120(c) establishes a BOD₅ effluent limit of 10 mg/l, the Agency has set the same limit in Atlanta's NPDES permit for carbonaceous biochemical oxygen demand (CBOD₅).

² The amended petition will be referenced by "A. Pet", the Agency recommendation will be referenced by "Rec." and Atlanta's response will be referenced by "Res."

that based on effluent sampling performed by a licensed contract operator, the average annual concentrations for CBOD₅ were 12.33 mg/l for 1990, 10.12 mg/l for 1991 and 11.3 mg/l for 1992. (A. Pet. at 7.) For suspended solids, the average annual concentrations were 12.5 mg/l for 1990, 15.0 mg/l for 1991 and 14.2 mg/l for 1992. (A. Pet. at 7.)

The Agency states that the non-compliance problem at Atlanta prompted the Agency to hold a pre-enforcement meeting on October 7, 1992. (Rec. at 5.) As a result of that meeting, the Agency states that Atlanta agreed to upgrade the facility and in fact hired a consultant and obtained an Agency construction permit to build a new lagoon system. (Rec. at 5.) The construction on the project was delayed due to bid problems, and in late 1992 Atlanta learned of the City of East Moline (City) was considering extending the sewer and water services to the Atlanta's facility. (Rec. at 5.) Agency concern over the progress on the work of the new lagoon system prompted the Agency to refer an enforcement action to the Attorney General's office on August 17, 1993. A meeting was held by the parties on October 5, 1993, to discuss this variance and the enforcement cases. (Rec. at 6.)

REGULATORY FRAMEWORK

The instant variance request involves the Board regulations concerning NPDES permits and general effluent limitations for deoxygenating waste. The regulations are found at 35 Ill. Adm. Code §§ 304.120(c) and 304.141(a), which in pertinent part state:

Section 304.120 Deoxygenating Wastes

(c) No effluent whose dilution ratio is less than five to one shall exceed 10 mg/l of BOD(5) or 12 mg/l of suspended solids, except that sources employing third-stage treatment lagoons shall be exempt from this subsection (c) provided all of the following conditions are met:

* * *

Section 304.141 NPDES Effluent Standards

a) No person to whom an NPDES Permit has been issued may discharge any contaminant in his effluent in excess of the standards and limitations for that contaminant which are set forth in his permit.

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) (1992).) 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. Pollution Control Board (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 unreasonable hardship.

A further feature of a variance is that it is, by its nature, 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. The maximum term for a variance is five (5) years pursuant to Section 36(b) of the Act. (415 ILCS 5/36(b) (1992).)

COMPLIANCE PLAN

The Agency states concern over when Atlanta will be in compliance with the requirements of 35 Ill. Adm. Code 304.120(c) and 35 Ill. Adm. Code 304.141(a) as that section relates to 35 Ill. Adm. Code 304.120(c). (Rec. at 6-8.) More specifically the Agency states that Atlanta has not provided the Board with specific information stating when construction would be completed on the extension of the City's sewer line. (Rec. at 7.) In its response to the Agency recommendation Atlanta states that the City indicated construction on the sewer line extension would take roughly two (2) years after its commitment to extend the sewer lines. (Res. at 4.) Since the City decision deadline is August 31, 1994, construction would be completed by August 31, 1996. (Res. at 4.) Atlanta also indicates that if the City does not decide whether it is going to extend the sewer lines by August 31, 1994, Atlanta will complete construction of the lagoon system by August 31, 1995. (Res. at 4.) Therefore, Atlanta's compliance plan is to connect to the City's sewer line by August 31, 1996, or finish construction of the WWTP lagoon system by August 31, 1995.

HARDSHIP

As stated previously, 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) (1992).) Atlanta states that denial of the variance would impose an arbitrary or unreasonable hardship. (A. Pet. at 21, Rec. at 8.) The Agency notes the hardship to Atlanta will be the cost that it may or may not incur if it is to connect with the City sewer line or finish the construction of the Lagoon system. (Rec. at 8.) Atlanta states that if the relief is not granted the cost of the construction of the lagoon system is estimated at \$300,000. (A.

Pet. at 21, Rec. at 8.) If relief is granted and the City extends the sewer line, Atlanta would have an initial cost of \$20,000 and \$18,000 a year for sewer fees. (A. Pet. at 21, Rec. at 8.) Additionally, Atlanta implies that if the relief is not granted the opportunity to remove the discharge from the unnamed tributary by connecting to the sewer line would be lost due to their finishing the lagoon system. (Res. at 5-6.)

ENVIRONMENTAL IMPACT

Both parties agree that the environmental impact to the unnamed tributary is limited to the deposits of sludge and unnatural algae growth as a result of the discharge. (A. Pet. at 13, Rec. at 8.) Atlanta states that the environmental impact of the discharges will be of little or no impact to the unnamed tributary during the variance period. (A. Pet. at 13.) The unnamed tributary above and below the Atlanta's discharge does not contain fish. (A. Pet. at 14.) The Agency states that the continued operation of the Atlanta facility will cause adverse impact to the unnamed tributary because of the excessive sludge deposits which will likely have to be physically removed. (Rec. at 11.)

Atlanta has stated that it will "optimize the effectiveness of the existing WWTP" during the requested variance term. (A. Pet. at 20.) Atlanta does not propose any interim limits to be complied with at the WWTP during the variance period. However, Atlanta does state that it is willing to meet general standards except during significant rainfall events and a period of time thereafter until the biomass is reestablished, provided that the monthly average discharges of BOD₅ and TSS remain below 45 mg/l. (Res. at 3.)

In addition, Atlanta also proposes to remediate the unnamed tributary by removing and depositing the excessive algae growth and sludge deposits that have accumulated over the years. (A. Pet. at 20.) Atlanta also proposes to do a final cleanup of the unnamed tributary once it either connects to the City's proposed line or constructs its lagoon system. (A. Pet. at 14.)

CONSISTENCY WITH FEDERAL LAW

Both the Agency and Atlanta agree that the requested variance relief may be granted consistent with applicable federal law or regulation. (A. Pet. at 22, Rec. at 8.)

CONCLUSION

Atlanta has demonstrated that immediate compliance with 35 Ill. Adm. Code § 304.120(c), Deoxygenating Wastes, and 35 Ill. Adm. Code § 304.141(a) NPDES Effluent Standards, would impose an arbitrary or unreasonable hardship. The unnamed tributary is not utilized except for the WWTP discharge and for runoff. The

possible environmental impact to the unnamed tributary is minimal. As stated by the parties the impact is limited to the sludge deposits and the algae growth. Atlanta states that it will remediate the impact of the discharge to the unnamed tributary by removing all sludge deposits and algae growth connected to the discharge, and will optimize operations during the term of the variance so to minimize any possible adverse impact. The immediate compliance with the regulations would pass up the opportunity to remove the WWTP discharge altogether from the unnamed tributary and connect to the City sewer line. It is in the public interest to allow for the possibility of the more environmentally sound alternative of removing Atlanta's discharge from the unnamed tributary by connecting Atlanta's discharge to the City's sewer line as opposed to compliance through a lagoon system which would continue the discharge.³

For the reasons stated above the Board will grant the variance request for a maximum three-year period to allow petitioner to come into compliance, but with the inclusion of certain conditions contained in the Board's order below to address Board and Agency concerns.

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

ORDER

Atlanta Meadows, LTD. and R.O.C. Corporation (Atlanta Meadows) are granted a variance from 35 Ill. Adm. Code § 304.120(c), Deoxygenating Waste, and 35 Ill. Adm. Code § 304.141(a), National Pollutant Discharge Elimination System (NPDES) Effluent Standards, subject to the following conditions:

- A) Variance shall terminate according to the following:
 - 1) Should the City of East Moline decide to extend its sewer lines to Atlanta

³ Based upon the record before the Board, it is not clear as to whether compliance would be achieved through the lagoon system. Since the Agency's issuance of the construction permit for the lagoon system is not an issue before us, however, the Board makes no findings regarding the appropriateness of that permit.

Meadows' facility, the variance shall terminate on the earlier of:

- a) the date compliance is demonstrated, or
 - b) the date of completion and connection of the facility to the City of East Moline sewer lines, or
 - c) August 31, 1996.
- 2) Should the City of East Moline fail to decide or decides not to extend its sewer lines to Atlanta Meadows' facility by August 31, 1994, the variance shall terminate on the earlier of:
- a) the date compliance is demonstrated, or
 - b) the date of completion of construction of a lagoon system and compliance is demonstrated, or
 - c) August 31, 1995.
- B) During the term of the variance Atlanta Meadows, LTD. and R.O.C. Corporation shall take all reasonable measures with their existing facility to minimize the level of BOD₅ and suspended solids discharged from its outfall into the unnamed tributary.
- C) Atlanta Meadows LTD. and R.O.C. Corporation shall continue construction of the lagoon system to achieve compliance with the Board regulations on September 1, 1994, if the City of East Moline decides not to extend the sewer lines or does not make a decision.
- D) Atlanta Meadows LTD. and R.O.C. Corporation shall remediate the unnamed tributary by removing unnatural algae growth and sludge deposits attributable to its discharge once compliance.

Within 45 days of the date of this order, Petitioner shall execute and forward to Charles Gunnarson, 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 93-72, January 20, 1994.

Petitioner _____

Authorized Agent _____

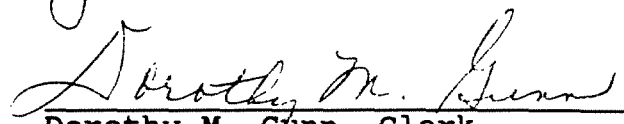
Title _____

Date _____

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act (415 ILCS 5/41) provides for the appeal of final Board orders within 35 days of the date of service of this order. (See also 35 Ill. Adm. Code 101.246, Motion 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 20th day of January, 1994, by a vote of 7-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board