

ILLINOIS POLLUTION CONTROL BOARD
July 31, 1986

ARLINGTON PARK RACETRACK,)
)
 Petitioner,)
)
 v.) PCB 86-117
)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

OPINION AND ORDER OF THE BOARD (by J. D. Dumelle):

This provisional variance request comes before the Board upon a July 31, 1986 Recommendation of the Illinois Environmental Protection Agency (Agency). On July 31, 1986, the Respondent filed a Motion to Supplement the Agency Recommendation which is hereby granted. The Agency recommends that a 45-day provisional variance be granted to the Petitioner to allow surface drainage from the stable area of the Arlington Park Racetrack and to relieve it from the requirement of its permit implementation schedule.

The Arlington Park Racetrack, which was virtually destroyed by fire on July 31, 1985, is a well-known horse racing facility located on a site northwest of the intersection of Wilke Road and Euclid Street in Arlington Heights, Illinois. (Pet. 1). The Petitioner discharges sanitary wastes to the Metropolitan Sanitary District of Greater Chicago (MSDGC) for appropriate treatment. Solid animal waste (i.e., horse manure) generated in the stable area by the horses is removed from the premises by a private contractor. (Pet. 1). During the racing season in prior years before the tragic July, 1985 fire, about 2,200 horses were stabled at the Arlington Park Racetrack. However, during the severely curtailed 1986 racing season, only about 1,200 horses will use the Petitioner's stables. The Petitioner intends to mitigate any adverse environmental impact of surface drainage from its stable areas and has requested provisional variance relief "to allow stabling and racing of approximately 1,200 horses at the site for the period from August 1, 1986 to September 30, 1986 inclusive." (Pet. 1).

On January 20, 1984, the Arlington Park Racetrack was issued NPDES Permit #IL0063487, which authorized the discharge of uncontaminated runoff to Salt Creek, a tributary of which passes through the Petitioner's property. This NPDES Permit delineated the criteria necessary for the Arlington Park Racetrack to comply

with 35 Ill. Adm. Code Subtitle E: Agriculture-Related Pollution and "required the permittee to construct and operate storm sewers, manholes, catch basins, a holding pond, pump station, and land application area for the holding pond effluent within 180 days of issuance of the permit." (Rec. Supplement 1). However, the Agency has indicated that the permittee was in noncompliance with its NPDES Permit on July 20, 1984. Subsequently, after the tremendous fire which destroyed the Petitioner's racetrack during July, 1985, the owners of the facility have been forced to curtail their normal racing schedule and have made "no decision regarding permanent racing facilities". (Rec. Supplement 1). At the present time, the owners of the facility "have not determined whether it would be best to remain and rebuild at the present site or to relocate to another site." (Rec. 2).

In a letter to the Agency dated July 24, 1986, the Petitioner requested a provisional variance "from the requirements, special and standard conditions, discharge limitations and operating requirements" of its NPDES Permit. The Agency believes that "a variance from permit conditions cannot be given" and indicates that "only relief from the underlying regulations is appropriate." (Rec. Supplement 1; Rec. 1).

Accordingly, the Agency has recommended that the Board grant the Petitioner relief from the water quality standards set forth in 35 Ill. Adm. Code 302.203, 35 Ill. Adm. Code 302.206, and 35 Ill. Adm. Code 302.209. (Rec. 1; Rec. Supplement 1). Additionally, the Agency has recommended that the Board grant the Arlington Park Racetrack relief from the provisions of 35 Ill. Adm. Code 502.106(d), which requires compliance with a permit within 14 months of the date of the permit issuance. (Rec. 1; Rec. Supplement 1). Pertaining to the recommended relief from the requirements of Section 502.106(d), the Respondent has indicated that "it is the Agency's position that variance from this provision relieves Arlington Park Racetrack from the requirements of its implementation schedule and that they will then be able to employ the temporary measures described in their petition for this year's shortened racing schedule." (Rec. Supplement 1). Moreover, the Agency has emphasized that the Petitioner has a detailed program of specified actions to significantly reduce any potentially adverse environmental impact of any contaminated stormwater runoff. (Rec. Supplement 2).

To help ascertain the appropriate course of action as to whether to relocate to another site or to remain and rebuild the Arlington Park Racetrack facility, the Petitioner plans to hold races during the time period from August 19, 1986 to September 1, 1986. (Rec. 2). In order to minimize any environmental impact upon the receiving stream, the Petitioner has plans to implement an extensive series of actions to minimize any impact of surface drainage from the stable areas of its facility. On pages two and

three of its letter to the Agency dated July 24, 1986, the Petitioner has described its compliance program as follows:

". . . A number of actions have been, and will be, taken by the Arlington Park staff to mitigate any impact of park operations on the Salt Creek water quality. These actions will continue until all horses have left the stables in September, 1986. The following actions have been, and will be, implemented in order to minimize any adverse environmental impacts of park operations:

- (a) The number of horses stabled at the Park will be reduced from the normally stabled number of 2,200 during the racing season to 1,200 for the 1986 racing season;
- (b) The length of the racing season will be reduced from the approximate 120 day normal season to only two weeks for the 1986 season (August 19 through September 1);
- (c) Barn number 2, 3, 4 and 5 which are located adjacent to Salt Creek will not be used in the 1986 season. Drainage from the barn area will continue to receive chlorination prior to discharge. In earlier years approximately 800 horses were stabled in barn numbers 2, 3, 4 and 5. Horses will be moved to barns more remote from the creek and to barns with unpaved perimeter areas in an effort to produce smaller quantities of any runoff to the creek;
- (d) The outlet from the lake in the center of the track has been plugged. Lake level will be controlled by utilization of the lake water for on-site irrigation of grass horse tracks. The irrigation will be carefully controlled to assure it produces no runoff;
- (e) A major housekeeping effort will be undertaken at the Park. Ten park employees will work full-time cleaning stable areas subject to runoff. The assistance of trainers and other horse personnel have been, and will be, enlisted in maintaining park cleanliness. The contractor for removing stable area waste will be closely supervised by senior park staff. The mechanical street cleaner will be operated at least three times per day (or more, if required) to ensure cleanliness;
- (f) All chlorinators, including those for unused barns 2, 3, 4 and 5, will be used during the time

horses are stabled at the Park. Chlorine residual will be monitored and documented at each outfall;

- (g) Each catch basin will be regularly pumped out to ensure that space is available to capture settleable debris;
- (h) In an effort to reduce discharge of suspended solids at outfall 15B, the existing clay road has been paved. Additional solids at this location will be captured by a rack filter installed at the drainage inlet." (Pet. 2-3).

Additionally, the Petitioner has stressed that "drinking water is not impacted by or involved with this request for a provisional variance." (Pet. 2). Moreover, the Petitioner has indicated that:

". . . Adverse impacts on Salt Creek will be minimal, if any. Some increase in suspended solids and biochemical oxygen demand with attendant reduction in stream dissolved oxygen levels may result from the discharge. Levels of fecal coliforms in the stream should be improved and reduced due to the chlorine residual maintained in discharges and the use of chlorinators on the site." (Pet. 2).

Accordingly, the Petitioner has concluded that "all known feasible methods of reducing or eliminating any adverse impacts on Salt Creek are being implemented." (Pet. 4). In support of its good faith efforts to protect the environment, the Petitioner has noted that:

". . . The Illinois Environmental Protection Agency issued a NPDES permit to Arlington Park Racetrack, Ltd. with an expiration date of October 1, 1988. At the time of the fire in July, 1985 that destroyed the Arlington Park racetrack, the applicant had been working with the Agency and consultants with the intention of commencing construction between September 1985 and August 1986 of extensive plans with the objectives outlined in the attached July 30, 1985 letter from Mr. James A. Zdeb of McDonough Associates Inc., the racetrack's engineers, to Mr. S. Alan Keller, Manager - Watershed Unit, Permit Section, Division of Water Pollution Control." (Pet. 4).

In its Recommendation, the Agency has supported the Petitioner's statements in reference to the minimal environmental impact of operations and has concluded that "in light of the actions and precautions which the Petitioner has outlined, the Agency expects any adverse environmental impact on the receiving stream to be minimal." (Rec. 2).

". . . Arlington Park Racetrack's compliance with certain requirements of its NPDES permit would impose on it arbitrary and unreasonable hardship for the following reasons: The racetrack was destroyed by fire in July, 1985 and the future of the racetrack at its present location is undecided at this time; the holding of the Arlington Million horserace and other prize races are a tradition that is known and popular locally, nationally and world-wide; substantial sums of money have been, and will be, spent by the owners of Arlington Park to stable and race horses during the period August 1 through September 30, 1986; the stabling and racing of horses in August and September is significant to the economic welfare of the State of Illinois and the community and businesses surrounding the racetrack; the numerous past and present efforts made by Arlington Park to reduce and/or eliminate any environmental problems; and the lack of any harm to the environment or the public." (Pet. 2).

The Respondent concurs with the Petitioner's viewpoint pertaining to the existence of an arbitrary or unreasonable hardship if the requested relief were denied and states that "the Agency agrees that denial of Petitioner's request would impose an arbitrary and unreasonable hardship upon Petitioner due to the severely curtailed racing schedule and the losses realized due to the fire." (Rec. 2).

The Agency has also indicated that there are no Federal regulations that would preclude the granting of the requested provisional variance and there are no public water supplies which would be adversely affected by the granting of the requested relief. (Rec. 2).

The Agency has therefore concluded that compliance on a short-term basis with the applicable standards would impose an arbitrary or unreasonable hardship upon the Arlington Park Racetrack. Accordingly, the Agency has recommended that the Board grant the Petitioner a provisional variance from 35 Ill. Adm. Code 302.203, 302.206, 302.209, and 502.106(d), subject to certain conditions.

Pursuant to Section 35(b) of the Illinois Environmental Protection Act, the Board will grant the provisional variance as recommended.

This Opinion constitutes the Board's findings of fact and conclusions of law in this matter.

ORDER

The Petitioner, the Arlington Park Racetrack, is hereby granted a provisional variance from 35 Ill. Adm. Code 302.203, 302.206, 302.209, and 502.106(d) to allow surface drainage from its stable area, subject to the following conditions:

1. The provisional variance shall commence on August 1, 1986 and continue for 45 days through September 14, 1986.
2. The Petitioner shall implement and adhere to the actions outlined in Item 8 of its variance petition so as to minimize the impact of any discharge to Salt Creek.
3. Within 10 days of the date of the Board's Order, the Petitioner shall execute a Certification of Acceptance and Agreement which shall be sent to Mr. James Frost of the Agency at the following address:

Mr. James Frost
Illinois Environmental Protection Agency
Division of Water Pollution Control
2200 Churchill Road
Springfield, Illinois 62706

This certification shall have the following form:

I, (We), _____, having read the Order of the Illinois Pollution Control Board in PCB 86-117 dated July 31, 1986, understand and accept the said Order, realizing that such acceptance renders all terms and conditions thereto binding and enforceable.

Petitioner

By: Authorized Agent

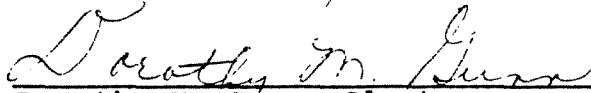
Title

Date

4. The Respondent's July 31, 1986 Motion to Supplement the Agency Recommendation is hereby granted.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 3/21 day of July, 1986 by a vote of 5-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board