

ILLINOIS POLLUTION CONTROL BOARD
August 18, 1977

SPINNEY RUN FARMS CORPORATION,)
)
) Petitioner,)
)
)
 v.) PCB 76-326
)
)
 ENVIRONMENTAL PROTECTION AGENCY,)
)
) Respondent.)

HAROLD W. KLINGNER and JOHN M. MUELLER, APPEARED ON BEHALF OF PETITIONER;
JOHN BERNBOM, APPEARED ON BEHALF OF RESPONDENT.

OPINION AND ORDER OF THE BOARD (by Mr. Goodman):

This matter is before the Board on a Petition for Variance filed December 27, 1976 seeking relief from Chapter 3: Water Pollution Regulations, Rules 203(a), 403, and 404(f). A hearing was held on May 19, 1977 in Gurnee, Lake County.

Spinney Run Farms Corporation (Spinney Run) is an independently owned milk processing plant located in Lake County. Raw milk is received, then processed and bottled for distribution. Waste results from spillages, cleansing of the equipment, processing losses and the restroom facilities. The wastewater is treated by the extended aeration process.

This is the latest in a long line of variance and enforcement actions concerning Spinney Run which have come before the Board. Spinney Run had been ordered to begin construction of a pretreatment facility in May, 1975 in PCB 74-213 and PCB 74-347, consolidated enforcement and variance actions. Variance was granted with respect to the discharge of pollutants to the Des Plaines River during construction of the facility. Variance was further granted until December 31, 1977 in PCB 76-90, wherein we noted Spinney Run's recent good faith efforts to abate pollution problems. Petitioner now seeks relief from the deadlines imposed in conditions C and D of the PCB 76-90 Order, which limit the interim concentrations of BOD and suspended solids Petitioner may emit.

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Petitioner requests that the 300/150 mg/l standard for BOD and suspended solids continue beyond the original December 31, 1976 deadline to August 31, 1977, the prospective completion date for the pretreatment facility. Spinney Run claims that the completion of the pretreatment facility was delayed because of unforeseeable circumstances not within its control. Additional time was required to modify and manufacture the specially designed equipment (R.27). Because of the unique nature of the project (all specially fabricated concrete work), invitations to bid were rejected, and additional ones had to be sent out (R.34). Further, construction ceased during the 43 days of below freezing temperatures experienced this winter (R.36 & 37).

At the time of the hearing in May, construction of the facility was near completion (R.36). Petitioner argues, and the Board agrees, that denial here would impose an unreasonable hardship, considering that this latest delay was unavoidable, that Petitioner's have already expended much toward compliance, and most importantly that there is negligible environmental impact on the Des Plaines River from Petitioner's treated effluent.

The Agency Recommendation filed herein requests that an extension of the limitations imposed in condition C of PCB 76-90 be granted only until June 30, 1977 based upon a legal conclusion concerning Sections 301 and 510 of the Federal Water Pollution Control Act Amendments of 1972 (P.L. 92-500) with regards to achieving best practical control technology available (BPT), and Section 35 of the Illinois Environmental Protection Act. The Board has determined it may grant variances from Illinois Regulations beyond July 1, 1977 to the extent, in accordance with Section 35, consistent with P.L. 92-500. The limitations of this variance then, with respect to P.L. 92-500, are to be determined by the U.S. Environmental Protection Agency, which is charged with the administration of that law. See City of Quincy v. Environmental Protection Agency, PCB 77-102 (July 7, 1977) and CPC International v. Environmental Protection Agency, PCB 77-149 (August 18, 1977).

Petitioner also requests relief from the deadlines of the more stringent interim concentration limitations of condition D in PCB 76-90. The beginning date of the second limitation, related directly to the operation of the pretreatment facility, will be readjusted accordingly. Completion of a necessary element in Spinney Run's compliance program, the North Shore Sanitary Treatment Plant at Gurnee, to which Petitioner's effluent will be diverted, is now scheduled to be in operation by mid-1978 rather than by December 31, 1977, as was originally scheduled. Uncontrollable delay

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again moves us to grant variance beyond the original compliance deadline. Petitioner shall comply with the 30 day average 100 and 70 mg/l standard for BOD and suspended solids, respectively by September 1, 1977. These limits shall continue in effect until June 30, 1978 or until diversion to the North Shore Sanitary Treatment Plant at Gurnee, whichever occurs first.

In its final argument, the Agency amended its recommendation by requesting that the variance be granted subject to the condition that Petitioner investigate methods of removing sludge from the bottom of the river. The Board believes that such a condition, while appropriate in an enforcement proceeding related to the sludge, is inappropriate here.

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

ORDER

It is the Order of the Pollution Control Board that Spinney Run Farms Corporation be granted variance from Rules 203(a), 403, and 404(f) of Chapter 3: Water Pollution Regulations until June 30, 1978 or until diversion to the North Shore Sanitary Treatment Plant at Gurnee whichever occurs first, subject to the following conditions:

- (a) Continue construction of the pretreatment facility previously approved by the Agency;
- (b) Submit monthly reports to the Agency indicating contaminant levels and the progress of construction;
- (c) Limit the 30 day average BOD and suspended solids concentration to 300 and 150 mg/l respectively until August 31, 1977;
- (d) Limit the 30 day average BOD and suspended solids concentration to 100 and 70 mg/l respectively from September 1, 1977 until diversion of all wastewater flows to the North Shore Sanitary District, or until June 30, 1978 whichever occurs first;

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- (e) Submit an amended bond in the amount of \$100,000 in a form agreeable to the Agency to assure full and timely completion of compliance program;
- (f) Execute and forward to the Illinois Environmental Protection Agency, Division of Water Pollution Control, 2200 Churchill Road, Springfield, Illinois 62706, within 35 days of the date of this Order, a certificate of acceptance in the following form:

CERTIFICATION

I (We), _____ having read and fully understanding the Order of the Illinois Pollution Control Board in PCB 76-326 hereby accept said Order and agree to be bound by all of the terms and conditions thereof.

SIGNED _____

TITLE _____

DATE _____

Mr. Young abstains.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 18th day of August, 1977 by a vote of 4-0.

Christan L. Moffett
Christan L. Moffett, Clerk
Illinois Pollution Control Board

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