

ILLINOIS POLLUTION CONTROL BOARD
April 28, 1977

BALL CHATHAM COMMUNITY UNIT)
SCHOOL DISTRICT 5,)
)
Petitioner,)
)
v.) PCB 77-31
)
ENVIRONMENTAL PROTECTION AGENCY,)
)
Respondent.)

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

This matter comes before the Board on the petition filed on January 31, 1977, by the Ball Chatham Community Unit School District 5 seeking variance from Rules 402, 404(f)(ii)(A) and 404(f)(ii)(D) as regards phosphorus, ammonia nitrogen and dissolved oxygen. The variance is sought for a discharge to Lake Springfield from a waste treatment facility located at Glenwood-Junior-Senior High School as well as for a discharge to Brush Creek from a waste treatment facility located at Ball Elementary School. Brush Creek Valley is the proposed site for Lake Springfield II, although Brush Creek is presently tributary to Horse Creek. The recommendation states that water from Horse Creek is pumped into Lake Springfield during periods of low water level in that lake. The Agency Recommendation favorable to the grant of the variance was filed on March 21, 1977.

Petitioner seeks this variance to qualify these discharges for Rule 404(f)(ii) (Pfeffer) exemptions, thus relieving Petitioner of the requirement of performing certain treatment plant upgradings. It is Petitioner's contention that the expense of these upgradings would place an unreasonable hardship on Petitioner, a contention based on the fact that Petitioner hopes to discharge directly to the sewers of the Springfield Sanitary District at a time no later than 1980.

While it is indeed probable that the Board would agree with this contention if the extensions occur as planned, the Board believes, that with the exception of the request for relief for the phosphorus discharge from the Glenwood School, this petition is inadequate and premature. The petition is inadequate because it fails to include any data or analysis showing that the discharges cause a water quality violation; indeed, the petition

fails to contain any water quality data whatsoever. It is elementary that before the Board will grant variance from a regulation, violation of that regulation must be shown. The Board believes this petition is premature because it is Petitioner's obligation to first formally apply to the Agency for Rule 404(f)(ii) exemptions before filing a variance petition with the Board. It is not apparent from the pleadings that this procedure has been followed and no adequate reason was presented for the departure therefrom. The exemption procedure was provided in the regulations in general recognition of the fact that it would be far more practical and economical if the Agency possessed the authority to first formally rule on these requests. The Board believes therefore, that in all cases except those in which the water quality violations are obvious, this procedure should be followed. In submitting the Rule 404(f)(ii) exemption request to the Agency for the discharge from the Glenwood School, the District may employ the mixing zone concepts as contained in Rule 201 in making its analysis regarding the effects of the discharge on the lake's dissolved oxygen water quality. Village of Ina, PCB 77-38 (April 28, 1977).

In view of the foregoing, with the exception noted, this matter will therefore be dismissed without prejudice. In regards to the phosphorus discharge from the Glenwood treatment plant, the Board will, after taking notice of the many decisions already rendered in regards to discharges of this particular contaminant, grant the requested relief. Village of Argenta and Village of Cerro Gordo, PCB 75-182, PCB 75-183, 18 PCB 152; City of Hoopeston, PCB 76-234; Caseyville Township, PCB 77-14. This same relief would have been provided for the discharge from the Ball Elementary School if the pleadings had established that the discharge presently enters a lake or reservoir. Further, the Board holds that a plant's discharge requirements are not dependent on the fact whether some downstream user chooses to pump that water into a lake or reservoir.

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

ORDER

The Ball Chatham Community School District 5 is granted variance for its discharge from the Glenwood School sewage treatment facility from Rules 203(c), 402, 404(f)(ii)(A) and 404(f)(ii)(D) of the Water Regulations as regards phosphorus until April 1, 1982, subject to the following conditions:

1. This variance will terminate upon adoption by the Board of any modification of the existing phosphorus water quality standards and effluent limitations and the District shall comply with such revised regulations when adopted by the Board.

2. Within 35 days of the date of this Order, the Petitioner shall submit to the Manager, Variance Section, Division of Water Pollution Control, Illinois Environmental Protection Agency, 2200 Churchill Road, Springfield, Illinois, 62706, an executed Certification of Acceptance and agreement to be bound to all terms and conditions of the variance. The form of said certification shall be as follows:

CERTIFICATION

I, (We), _____ having read the Order of the Pollution Control Board in PCB 77-31, understand and accept said Order, realizing that such acceptance renders all terms and conditions thereto binding and enforceable.

SIGNED

TITLE

DATE

The Petitioner's request for variance from Rules 402, 404 (f)(ii)(A) and 404(f)(ii)(D) as regards ammonia nitrogen and dissolved oxygen for both the Glenwood School and Ball Elementary School, as well as the request for the same relief as regards phosphorus at the Ball Elementary School, are hereby dismissed without prejudice.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 28th day of April, 1977 by a vote of 5-0.

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