

ILLINOIS POLLUTION CONTROL BOARD
June 9, 1977

SANITARY DISTRICT OF ROCKFORD,)
a municipal corporation,)
)
) Petitioner,)
)
) v.) PCB 77-95
)
ENVIRONMENTAL PROTECTION AGENCY,)
)
) Respondent.)

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

This matter is before the Board on a Petition for Variance filed by the Sanitary District of Rockford (District) on March 28, 1977. The District seeks a Variance from the cyanide effluent limitations in Rule 408(a) of Chapter 3: Water Pollution, for discharges from the District's sewage treatment plant (STP) into the Rock River. Ill. PCB Regs., Ch. 3, §408(a)(1976).

Pursuant to a formal Objection filed on March 31, 1977, by Respondent Environmental Protection Agency, the Board, on April 14, 1977, authorized a hearing in the matter. Pursuant to a motion subsequently filed by the Agency, the Board entered an Interim Order on May 12, 1977, granting the Agency leave to withdraw its Objection and setting the case for decision without hearing. Accordingly, no hearing was held in this matter.

The principal basis of the District's Petition is the pendency of various proposals to amend the existing 0.025 mg/l effluent standard for cyanide. Although the District cites the Illinois Effluent Standards Advisory Group's (IESAG) recent proposal, R76-21, the Agency's Recommendation, filed April 29, 1977, cites an additional proceeding, R74-15,-16, "Cyanide," in which hearings have already been concluded on both the merits and economic impact.

Both the Agency and the District claim that failure to grant the requested Variance would result in arbitrary and unreasonable hardship in two ways:

1. The District would be required to substantially expand its existing and proposed sewage treatment capacity to provide for attainment of the 0.025 mg/l standard; such expenditures, amounting to at least \$3,315,650, would be unwarranted when the Board has pending before it proposals which would loosen the existing cyanide effluent standard.

2. Under the strictures of Rule 702 of Chapter 3, the District's current inability to meet the existing cyanide standard would require that all cyanide discharges to the District's system would themselves be required to meet the 0.025 mg/l standard; in light of the proposed changes to the cyanide effluent standard, a requirement that sewer dischargers to the District meet that same standard would constitute an arbitrary and unreasonable hardship. (Were the District able to meet the effluent standard requested in its Variance, it could upon application to the Agency, pursuant to Rule 703(b), allow discharges to its sewers of up to 2.0 mg/l "readily releaseable" cyanide, and 10 mg/l total cyanide.)

Both the District and the Agency note that no water quality standards violations have been caused in the Rock River as a result of the District's discharges. It is therefore argued that the grant of the requested Variance would not cause environmental damage.

The District's cyanide effluents have been reduced markedly during the last 15 years, prior to which the District admits that its cyanide concentrations were excessive, (Ex. D to Petition). Recent sampling by the Agency indicates relatively low cyanide concentrations in the District's effluent, ranging from 0.01 mg/l to 0.11 mg/l, (Rec., ¶7). Sampling by the District indicates similar results, (Ex. I to Petition).

Although the Board has held that lack of environmental damage alone will not justify the grant of a Variance, it is also held that where the likelihood of environmental damage is slight, there need be correspondingly little hardship shown. Interpace Corp. v. EPA, PCB 75-495, 22 PCB 37 (1976). We have held, likewise, that the pendency of a Regulatory proceeding concerning the Regulation from which Variance is sought may provide an adequate compliance plan in support of a Variance. Commonwealth Edison v. EPA, PCB 73-245, -248 (consol.), 13 PCB 69, 80, 81 (1974); In Re: Cooling Lakes, R75-2, 18 PCB 681, 685 (1975). See also, Illinois Power v. EPA, PCB 75-31, 18 PCB 241, 254 (1975).

Without reaching any conclusion as to the merits of any of various proposals pending before the Board with regard to cyanide, we find that the pendency of the Regulations, when viewed in light of the District's past efforts toward compliance and the present absence of water quality standards violations, will support a Variance. Although the District has requested the standards proposed in R76-21, our Variance grant may not be seen as favoring that proposal over either the existing standard or any of the other standards proposed in R74-15, -16. (The standard proposed by IESAG in R76-21 was also proposed by it in hearings on R74-15,-16.)

The interim standards set in this Variance will closely parallel existing performance by the District. It will make allowance for measurement variation between grab, 24-hour composite, and 30-day averaging, as proposed to the Board in R74-15, -16, and R76-21.

We shall also condition this Variance upon compliance with whatever standard is adopted by the Board in R74-15, -16. To that end, we shall provide that the Variance will end upon final action of the Board in that matter.

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

ORDER

IT IS THE ORDER OF THE POLLUTION CONTROL BOARD that Petitioner Sanitary District of Rockford be granted a Variance from the cyanide effluent limitation in Rule 408(a) of Chapter 3: Water Pollution, for a period of one year from the date of this Order or until final action by the Board in R74-15, -16, "Cyanide," whichever occurs first, such Variance conditioned upon compliance with the following:

1. Petitioner's effluent shall not exceed the following cyanide limitation during the term of the Variance:

- (a) any instantaneous (grab) sample: 0.5 mg/l
- (b) any 24-hour composite sample: 0.2 mg/l
- (c) any 30-day average sample: 0.1 mg/l

2. Petitioner's cyanide effluent discharges shall not cause a violation of the 0.025 mg/l total cyanide water quality standard in Rule 203(f) of Chapter 3: Water Pollution, during the term of the Variance.

3. Petitioner shall, within thirty (30) days of the date of this Order, execute and forward to the Environmental Protection Agency, Control Program Coordinator, 2200 Churchill Road, Springfield, Illinois 62706, a Certificate of Acceptance in the format shown as follows:

CERTIFICATE OF ACCEPTANCE


I, (We), _____ having read the Order of the Illinois Pollution Control Board in case No. PCB 77-95, understand and accept said Order, realizing that such acceptance renders all terms and conditions thereto binding and enforceable.

SIGNED

TITLE

DATE

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 9th day of June, 1977, by a vote of 5-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board