

ILLINOIS POLLUTION CONTROL BOARD
December 2, 1976

MIDAS MIDWEST, INC.,)
)
) Petitioner,)
)
) v.) PCB 76-253
)
) ENVIRONMENTAL PROTECTION AGENCY,)
)
) Respondent.)

OPINION AND ORDER OF THE BOARD (by Dr. Satchell):

This variance petition was filed with the Environmental Protection Agency (Agency) on September 28, 1976. The petition was then filed with the Pollution Control Board (Board) on October 6, 1976. Petitioner, Midas Midwest, Inc., seeks a variance from Rule 203(h) of Chapter 3: Water Pollution Regulations (Chapter 3) in order to apply aquatic weed control chemicals to Tower Lake and North Lake located in the Village of Tower Lakes, Lake County, Illinois.

Petitioner wishes to treat Tower Lake and North Lake with aquatic weed control chemicals as needed during the period April 1, 1977 through September 1, 1977. The chemicals and dosages to be used are those described in the Department of Conservation's brochure entitled "Aquatic Weeds - Their Identification and Methods of Control," Fishery Bulletin No. 4. Petitioner states that only the areas that have unwanted growth will be treated. It is expected that this limitation in treatment will result in a high dilution rate and rapid decomposition. Petitioner indicates that where a body of water has over twenty-five percent of its area in unwanted growth only enough will be treated so that in no one week will more than twenty-five percent of the total area be treated. Tower Lake consists of approximately seventy acres at a depth of five feet or approximately 350 acre feet. North Lake consists of approximately seven acres at a depth of five feet or approximately 35 acre feet. Treated water will be retained in the lakes by a dam. Water from the lakes is not used for human or domestic animal consumption. The aquatic weed control chemicals will be applied by a state licensed applicator.

Petitioner contends that if the lakes are not treated they will be undesirable for sailing and swimming. According to Petitioner the treatment of the lakes will eliminate the natural habitat of snails which can carry worms which cause "swimmers' itch". Unless algal growth is controlled odor problems may result.

The Agency recommendation in this matter was filed on October 26, 1976. The Agency believes that Petitioner has shown that arbitrary and unreasonable hardship will be suffered if the variance is denied. The Agency recommends that the variance be granted subject to certain conditions. The Agency notes that four of the herbicides listed in the Department of Conservation's brochure are not registered with the U.S. EPA. These four herbicides are amitrole, dalapon, sodium arsenite, and 2,4,5-T ester. The Agency recommends that Petitioner should be required to utilize only those herbicides registered with U.S. EPA. Furthermore, the Agency believes that the registered herbicides should be applied only if the manufacturer's label states that the particular herbicide is for aquatic rather than terrestrial use. Each herbicide should only be used to treat the specific aquatic plants listed on the label. The Agency also recommends that in accord with past Board variances to Rule 203(h) that a Department of Conservation Fishery Biologist should apply or supervise the administration of aquatic weed control chemicals to Tower and North Lakes. Finally the Agency recommends Petitioner should be required to provide notice to the public prior to the treatment of the lakes.

The Board has in the past granted numerous variances from Rule 203(h) to permit applications of piscicides when necessary to enhance game fishing and to permit applications of herbicides to eliminate nuisance weed populations. The Board also has before it a regulatory change to Rule 203(h). The proposed change will allow application of aquatic herbicides and piscicides under certain restrictions. The Board finds that the facts are sufficient to show Petitioner would suffer an arbitrary and unreasonable hardship should the variance be denied. The Board therefore grants the variance subject to all of the Agency's recommended conditions as set out in the order accompanying this opinion.

This opinion constitutes the Board's findings of fact and conclusions of law.

ORDER

The Pollution Control Board hereby grants Midas Midwest, Inc., a variance from Rule 203(h) of the Chapter 3: Water Pollution Regulations in order to apply aquatic herbicides to Tower Lake and North Lake during the period from April 1, 1977 to September 1, 1977. This variance is subject to the following conditions:

- (a) Petitioner shall only utilize those herbicides which have been registered with the U.S. EPA and which are listed in the Illinois Department of Conservation brochure entitled "Aquatic Weeds - Their Identification and Methods of Control";
- (b) An Illinois Department of Conservation Aquatic Biologist shall apply or supervise the application of herbicides to Tower and North Lakes;
- (c) The herbicide dosage rate shall not exceed that recommended in the Illinois Department of Conservation brochure entitled "Aquatic Weeds - Their Identification and Methods of Control"; and that Petitioner shall only utilize U.S. EPA registered herbicides which have been designated by the manufacturer for aquatic use;
- (d) Petitioner shall post Tower and North Lakes prior to treatment and during application and afterwards for the period of time specified by the aforementioned Aquatic Biologist (See "b" above);
- (e) Within 28 days after the date of the Board Order herein, the Petitioner shall execute and forward to the Illinois Environmental Protection Agency, Variance Section, Manager, Division of Water Pollution Control, 2200 Churchill Road, Springfield, Illinois 62706, and to the Illinois Pollution Control Board a Certificate of Acceptance and Agreement to be bound to all conditions of the variance. The form of said Certificate shall be as follows:

CERTIFICATION

I (We), _____, having read and fully understanding the order of the Illinois Pollution Control Board in PCB 76-253, hereby accept said order and agree to be bound by all terms and conditions thereof.

SIGNED _____

TITLE _____

DATE _____

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 2ND day of December, 1976 by a vote of 4-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board