

ILLINOIS POLLUTION CONTROL BOARD
February 17, 1977

ALTON BOX BOARD COMPANY,)
)
 Petitioner,)
)
 v.)
)
 ENVIRONMENTAL PROTECTION AGENCY,)
)
 Respondent.) PCB 75-496
) PCB 75-508
 ENVIRONMENTAL PROTECTION AGENCY,) (Consolidated)
)
 Complainant,)
)
 v.)
)
 ALTON BOX BOARD COMPANY,)
)
 Respondent.)

Mr. Karl K. Hoagland, Jr. of Hoagland, Maucker, Bernard & Almeter appeared on behalf of Petitioner;
Mr. Robert N. Reiland, Assistant Attorney General for the State of Illinois and Mr. Robert Barewin, Attorney, Illinois Environmental Protection Agency appeared on behalf of Respondent.

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

On April 9, 1976 PCB 75-496, a variance petition by Alton Box Board Company (Alton), and PCB 75-508, an enforcement action against Alton Box Board Company, were consolidated and ordered set for hearing. Hearing was held on both matters on July 12 and July 13, 1976; this Opinion and Order will address both matters.

Variance Petition - PCB 75-496

PCB 75-496, Alton's variance petition, was filed before the Board December 22, 1975. The petition requests extension of the

variance heretofore granted by the Board in PCB 73-140, extended in PCB 74-5 and most recently in PCB 74-491. The Illinois Environmental Protection Agency (Agency) filed its initial recommendation on January 26, 1976. On March 9, 1976 Alton moved for an interim variance and provided a conditional waiver based upon its motion. The Board rejected the motion for interim variance and, since it had no waiver before it, dismissed the variance petition on March 11, 1976. The matter was reinstated on April 18, 1976, and the Agency filed an amended recommendation on May 6, 1976. As noted previously, hearing was held on the matter on July 12 and 13, 1976.

In its petition Alton alleges that it has complied with all the Board conditions set forth in the previous orders and that it has been pursuing the construction and installation of the proposed mill wastewater treatment plant and the selection of methods of treatment in a timely and good faith manner. Alton's prior allegations of undue and unreasonable economic hardship are realleged by the incorporation of the prior variance proceedings. The Agency in its recommendation and amended recommendation generally complains about Alton's responses to the prior Board orders concerning engineering and other reports which were to be sent to the Agency for review. In its amended recommendation of May 6, 1976, the Agency upon review of the reports and proposals submitted by Alton, states that Alton's preliminary plan raises serious questions as to whether Alton will achieve compliance with applicable regulations in the required amount of time.

At the hearing Alton amended its petition for extension of variance with the request that the variance be extended from April 6, 1976 to and including June 30, 1978, rather than the April 6, 1977 date originally requested (R.10). Upon review of the records of the prior variance proceedings and the evidence presented in this case, the Board is convinced that Alton continues to be in a position of arbitrary and unreasonable hardship with respect to immediate compliance with the Board Regulations. The issue herein is whether Alton has proceeded with the compliance plans associated with the prior variances in a good faith manner. The Agency has questioned Alton's response to paragraphs 6 and 12 of the prior Board order granting the extension of variance in PCB 74-491. In a previous Opinion the Board found that, while the response by Alton to these paragraphs was not exemplary, we could not find that Alton had proceeded in bad faith, Alton Box Board Company v. EPA, PCB 74-491 (February 3, 1977).

The Agency questions Alton's compliance with Condition 5 of PCB 74-491. Alton submitted a report to the Agency prepared by Williams Brothers Waste Control, Inc., (Alton Exhibit AB-6), which the Agency found to be inadequate in that it lacked data and documentation to support its conclusions and parts were vague and ambiguous. Condition 5 in PCB 74-491 required Alton to submit a report within 30 days detailing the steps which it has taken and intends to take to neutralize or treat the sludge remaining in the impoundment area. At

the hearing this question was the subject of testimony by Mr. Charles H. Sheppard, an engineer in the firm of Sheppard, Morgan and Schwaab. This firm was the author of the report submitted to the Agency by Alton on March 31, 1976, entitled "Description of Improved Channel Through Alton Impoundment Area, Including Revised Operating Procedures." (Alton Exhibit AB-37). Sheppard's testimony indicated in general that flooding of the impoundment area had been corrected by a channel and a series of pumps which will discharge water that normally flows to the Mississippi through two conduits in the levee called the "twin sixties" whenever the U.S. Corps of Engineers find it necessary to close the culverts when the river rises to flood stage (R.102-121). In addition Sheppard indicated that under very exceptional flood stage conditions, the Corps would find it necessary to flood the area behind the levee including the impoundment area in order to protect the levee from the hydrostatic pressure of the river (R.122). Sheppard estimated that the flood level would have to be unusually high and indicated the last time this happened was during the record breaking flood of 1973.

Fred Abel of Dravo, Incorporated testified on behalf of Alton. Abel identified Exhibit AB-36 as a proposal for engineering construction of a secondary treatment system for the Alton mill by Dravo, Incorporated and further indicated that Dravo is now working on the final design in preparation for soliciting proposals for construction. Abel testified that 80-85 percent of the potential for creating odors in the impoundment area has been corrected and that Alton's program, if seen to conclusion, would be 100 percent effective (R.161-164).

Lawrence W. Eastep testified on behalf of the Agency. His testimony indicated that the impoundment area still contained organic matter but that any problems, especially from hydrogen sulfide (H₂S) generation, would likely be caused only by a general flooding of the entire impoundment area (R.331-335). Upon review of Alton's Exhibit AB-6 and the testimony at the hearing by witnesses for both Alton and the Agency, the Board concludes that Alton has made a good faith effort to comply with Condition 5 of the Board order in PCB 74-491.

Condition 3(c) of the Board order in PCB 74-491 required Alton to submit preliminary wastewater treatment plant plans by March 31, 1976 to the Agency. Alton's Exhibits AB-35 and 36 are entitled "Preliminary Wastewater and Treatment Plant Process and Design, Plans and Specifications and Proposal for Engineering and Construction of a Secondary Treatment System for the Alton Mill, Alton Illinois, As Prepared by Dravo, Incorporated". The Board finds that these reports are sufficient compliance with Condition 3(e) of the Board order in PCB 74-491, considering that order envisioned a preliminary wastewater treatment plant plan. However, the Agency has expressed grave doubts as to whether the plans presented by Alton will achieve compliance with the standards of 20 mg/l of BOD₅ and 25 mg/l of suspended solids.

The Board can find no evidence of bad faith on the part of Alton

with regard to compliance with the Board order in PCB 74-491. Agency complaints concerning the adequacy of the submittals of Alton with respect to the Board order notwithstanding, the evidence presented indicates that Alton did in fact make a good faith effort to comply.

The Board is nevertheless cognizant of the apparent weaknesses of Alton's proposal for final compliance, especially with regard to what appears to be a periodic flushing of the wastewater system (R.367-370). The Board will, therefore, grant Alton's petition for extension of variance but only until April 6, 1977. This variance will be subject to all applicable conditions of the variance granted in PCB 74-491 and will additionally require Alton to provide details concerning phase 3 and phase 4 of its abatement plan for its wastewater treatment system, especially with regard to disposal of the sludge removed from lagoon and clarifier, the time schedule of the plan, and how the plan will achieve total compliance with the standards of 20 mg/l BOD₅ and 25 mg/l of suspended solids.

Enforcement Action - PCB 75-508

On December 31, 1975 the Agency filed a formal complaint against Alton alleging violation of Section 12(a) of the Environmental Protection Act, paragraph 3(a) of the Board order in PCB 74-491, Section 404(f) of the Board's Water Pollution Control Regulations (Regulations), and Rule 601(a) of the Regulations. Hearing was held in this matter on July 12 and 13, 1976 in conjunction with PCB 74-491 and PCB 75-496. No public comment has been received by the Board in this matter.

The Agency alleges that on certain dates in July of 1975 Alton allowed the discharge of effluent into the Shields Branch Creek which contained a concentration of suspended solids in excess of 130 mg/l, in violation of paragraph 3(a) of the Board's order in PCB 74-491. In addition the Agency alleges that during the same time period noted above Alton was in violation of Rule 404(f) of the Board's Water Pollution Regulations concerning the discharge of BOD₅ and suspended solids. Violation of either one or both of the aforementioned Board order and Regulation would result in a violation of Section 12(a) of the Act; prohibition of the discharge of any contaminants into the environment so as to violate Regulations or Standards adopted by the Board.

Testimony at the hearing indicated that during the period of time alleged in the complaint, Alton's clarifier was inoperative due to the failure of the bull and pinion gears and that repairs were being effected (R.380-411). The plant effluent (subsequent to preliminary treatment in the inplant clarifier) was bypassed directly by gravity through the industrial ditch and the twin sixty culverts. Under these conditions, Alton was unquestionably in violation of the Board order

and at least in technical violation of Rule 404(f) of the Regulations. The Board recognizes the emergency situation faced by Alton during that period of time under the conditions existing, i.e., there being no alternate method of discharging the effluent, and will therefore assess no penalty for these violations. In finding the aforementioned violations, the Board affirms its decision in PCB 74-5 that discharge into the impoundment area is not a direct discharge to the Mississippi River.

The complaint also alleges violation of Rule 601(a) of the Regulations in that Alton has provided no alternative or back-up system for its mill process wastewater treatment facilities, resulting in violation of Section 12(a) of the Act. Alton has never addressed itself to the problem of minimizing violations of applicable standards during such contingencies as the equipment failure noted in this case. In addition Alton is well aware of the Board's concern with any discharge by any facility into the impoundment area that is the subject of this enforcement action. By its inaction in this regard, Alton carries the burden of keeping its discharge from the impoundment area. Alton has failed to do so. The Board, therefore, finds Alton in violation of Section 601(a) of the Regulations and Section 12(a) of the Act.

With respect to 33(c) of the Environmental Protection Act the Board has considered the character and degree of injury to, or interference with, the protection of the health, general welfare and physical property of the people of the State of Illinois. The effluent that had been previously discharged into the impoundment area between Alton's plant and the Mississippi River has been a longstanding problem with which Alton was totally familiar. There is no contention that Alton's facility is not of great social and economic value to the area, considering testimony by Mr. Sunderland of Alton Box Board as to the number of people employed by Respondent and its total yearly payroll (R.209). The facility appears to be suitable to the area in which it is located so long as it does not contribute unnecessarily to problems in the surrounding environment. However, there can be no question of the technical practicability and economic reasonableness of the emergency equipment or installation that Alton failed to provide to their wastewater treatment plant. Testimony by Mr. Sunderland indicated that construction of a bypass pipe around the primary clarifier had been considered and was estimated to cost approximately \$38,000.00 (R.211). Alton's annual report for 1975, Agency Exhibit A, indicates that a cost of this type would have been no problem to Alton's finances. Considering the longstanding problem with the impoundment area, the Board's continued emphasis that discharges to the impoundment area would no longer be tolerated, and the complex compliance program ordered by the Board in PCB 75-491, Alton was on notice that discharge to the impoundment area was not a viable option in response to any problem that might occur at the plant. The Board therefore will impose a \$1,000.00 penalty for Alton's violation of Section 601(a) of the Regulations and 12(a) of the Act.

The Agency, in paragraph 13(b) of its recommendation in PCB 75-496 and throughout consideration of this consolidated matter, proposes that the Board order Alton to construct a clarifier bypass to insure that what happened in July of 1975 concerning Alton's effluent discharge to the impoundment does not recur. Indeed testimony by Mr. J.E. Sunderland, Treasurer and Chief Financial Officer of the Company, indicated that construction of a bypass pipe around the primary clarifier has been considered and is estimated to cost approximately \$38,000.00 (R.211). Alton, however, produced considerable testimony at the hearing concerning a new channel which they and the adjoining land owners engineered and constructed late in 1975. The sum of the testimony concerning this channel is that it has the capacity to carry, within its banks, all effluents previously sent through the impoundment area (R.105-110). At one end of this channel, as noted in Exhibit AB-37, are the twin sixties conduit with their discharge through the levee to the Mississippi. While these remain open, Shields Creek Channel and all other effluents in the area are discharged through the twin sixties to the Mississippi. In the event that the Army Corps of Engineers closes the twin sixties due to flood stage on the Mississippi, the flow of the water in the channel goes in the opposite direction, draining to the Alton pumping station which has a total pumping capacity (in two stages containing five pumps) of approximately 60,000 gallons per minute (R.110).

Testimony by Charles . Sheppard of the firm of Sheppard, Morgan and Schwaab, who specialize in municipal improvements, water works, sewage, etc., indicates that the channel will, even in its pumping mode, contain within its banks anything less than a 30-year storm, and will bring a 30-year storm back in the channel within 48 hours (R.111). The Board finds that the proposed bypass of the clarifier, whether or not it costs \$38,000.00, is not a reasonable requirement in the face of the existence of the new channel and its alleged capabilities. However, taking Alton at its word that its effluent will not enter the impoundment area due to the existent of this new channel, the Board will order Alton to cease and desist from any further such discharges.

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 in Variance Petition PCB 75-496 that:

1. Alton Box Board Company be granted a variance until April 6, 1977.

2. This variance will be subject to all the applicable conditions of the variance granted in PCB 74-491.

3. Alton shall provide to the Agency details concerning phase three and phase four of its abatement plan for its wastewater treatment system, particularly the disposal of the sludge removed from lagoon and clarifier, the time schedule of the plan and how the plan will achieve total compliance with the standards of 20 mg/l of BOD₅ and 25 mg/l of suspended solids. This detailed report shall be presented to the Agency within 45 days of the date of this Order.

It is the Order of the Pollution Control Board Enforcement Case PCB 75-508 that:

1. Alton Box Board Company was, during the time period alleged in the Complaint, in violation of paragraph (3) of the Board Order in PCB 74-491, Rule 404(f) of the Board's Water Regulations, and Section 12(a) of the Environmental Protection Act.

2. Alton Box Board Company was in violation of Rule 601(a) of the Board's Water Pollution Control Regulations and Section 12(a) of the Environmental Protection Act in that it failed to provide alternative or back-up systems for its mill process wastewater treatment facilities.

3. Alton Box Board Company shall pay a penalty of \$1,000.00 for the violations found in paragraph 2 above. Penalty payment by certified check or money order payable to the State of Illinois shall be made within 35 days to:

Environmental Protection Agency
Fiscal Services Division
2200 Churchill Road
Springfield, Illinois 62706

4. Alton Box Board Company shall cease and desist from any further discharges into the impoundment area.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 17th day of February, 1977 by a vote of 4-0.

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