

ILLINOIS POLLUTION CONTROL BOARD
February 17, 1977

EAST ST. LOUIS AND INTERURBAN WATER)	
COMPANY,)	
)	
Petitioners,)	
)	
v.)	PCB 76-297
)	
ENVIRONMENTAL PROTECTION AGENCY,)	
)	
Respondent.)	
- and -		
ALTON WATER COMPANY,)	
)	
Petitioner,)	
)	
v.)	PCB 76-298
)	(Consolidated)
)	
ENVIRONMENTAL PROTECTION AGENCY,)	
)	
Respondent.)	

Mr. Eugene Bernstein of Isham, Lincoln & Beale, appeared on behalf of Petitioners;
Ms. Barbara Sidler and Mr. Stephen W. Gunning, appeared on behalf of Respondent.

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

On November 12, 1976, Petitioners East St. Louis and Interurban Water Company (Interurban) and Alton Water Company (Alton) each filed before the Pollution Control Board a Petition for Review of Denial of an Operating Permit. Interurban's petition appealed the Environmental Protection Agency's (Agency) denial of an operating permit for discharges to the Mississippi River from its water purification plant in East St. Louis, St. Clair County, Illinois. Alton

appealed the Agency's denial of an operating permit for wastewater discharges to the Mississippi River from its water purification plant in Alton, Madison County, Illinois. The cases were consolidated by the Board, and hearings were held in these matters on January 4 and 5, 1977, in Alton and East St. Louis, respectively.

At the hearing, the parties submitted an evidentiary stipulation and several stipulation exhibits. The stipulation indicates that Alton is a public utility providing potable water to 16,700 customers in Alton and Godfrey, Illinois. At its water purification plant which is the subject of this proceeding, Alton withdraws water from the Mississippi River, purifies the raw river water for public consumption, and pumps the water to and through the Company's system for distributing water to the homes and businesses of its customers. Alton's plant houses a two-fold treatment system which both clarifies and softens the water.

Interurban provides a similar service to 23,044 customers in the East St. Louis area. The Interurban plant involved herein performs essentially the same function as the Alton plant, except that it clarifies but does not soften the water.

On April 10, 1974, both Petitioners originally submitted applications for an operating permit to cover discharges to the Mississippi River. Subsequent to several resubmittals, both applications were finally denied by the Agency on March 19, 1975 because the concentrations of total suspended solids (TSS) discharged from both plants exceeded the limits of Rule 408 of the Board's Water Pollution Regulations (Chapter 3 of the Board's Rules and Regulations).

The uncontroverted evidence indicates that the concentration of TSS in Petitioners' effluent does exceed the Rule 408 limitations. However, the evidence also indicates that the amount, rather than concentration, of TSS that Petitioners discharge is significantly less than the amount of TSS in the water they withdraw from the Mississippi River. Therefore, Petitioners contend that the Rule 401(b) exception to the numerical effluent standards for concentrations caused by influent contamination should apply to them. Rule 401(b) of Chapter 3 reads:

(b) Background Concentrations.

Because the effluent standards in this Part are based upon concentrations achievable with conventional treatment technology that is largely unaffected by ordinary levels of contaminants in intake water, they are absolute standards that must be met without subtracting

background concentrations. However, it is not the intent of these regulations to require users to clean up contamination caused essentially by upstream sources or to require treatment when only traces of contaminants are added to the background. Compliance with the numerical effluent standards is therefore not required when effluent concentrations in excess of the standards result entirely from influent contamination, evaporation, and/or the incidental addition of traces of materials not utilized or produced in the activity that is the source of the waste.

The Board, however, finds no merit to Petitioners' contention. Rule 401(b) clearly exempts effluent concentrations which are a result of influent contamination. In the present case, Petitioners deliberately concentrate the suspended solids in their effluent by removing the water. For example, in Exhibit 3 of Joint Exhibit A Alton reports an average of 68 mg/l of suspended solids in its influent for March 26-27, 1974, and an average concentration in its discharge of 11,060 mg/l. The Board finds that the concentration of suspended solids in Petitioners' effluent is not a result of either influent contamination, evaporation or the addition of trace amounts of materials and that Rule 401(b) did not intend to exempt effluents in which contaminants were deliberately concentrated. Therefore, Rule 401(b) does not apply.

Furthermore, the Board notes that 401(b) refers to "users" of water. However, in the present case Petitioners do not "use" waters, as, for example, would a facility which uses water for cooling purposes and then discharges it. Petitioners' herein are consumers of the water; the water itself is the commodity which they market. The Board finds that the exception granted in Rule 401(b) was not intended to apply in this type of situation.

At the hearing, Petitioners focused on questions of economic reasonableness and technical feasibility of complying with the Rule 408 limitation. Such questions are relevant to a variance petition or to a regulatory proposal, but are not relevant to a permit appeal.

Having found that the Rule 401(b) exception to the effluent limitations does not apply to Petitioners' discharges, the Board finds that the Agency properly denied Petitioners' applications for operating permits. Petitioners' permit appeals are, therefore, dismissed.

This Opinion constitutes the finding of facts and conclusions of law of the Board in this matter.

ORDER

It is the Order of the Pollution Control Board that the permit denial appeals filed by Interurban and Alton on November 12, 1976, be and are hereby dismissed.

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