

ILLINOIS POLLUTION CONTROL BOARD
January 8, 1976

CITY OF JACKSONVILLE,)
Petitioner,)
)
v.) PCB 75-390
)
ENVIRONMENTAL PROTECTION AGENCY,)
Respondent.)

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

This matter comes before the Pollution Control Board (Board) upon the September 24, 1975, Motion of the City of Jacksonville (Jacksonville) to amend the Board Orders in EPA v. City of Jacksonville, PCB 71-355. More particularly, Jacksonville seeks to be relieved of the burden of either relocating Mauvaise Terre Creek or removing remaining lime sludge deposits as per the Board's Order of May 23, 1972, as amended June 20, 1972, and March 8, 1973. On October 9, 1975, this motion was construed by the Board as a Petition for Variance. An Environmental Protection Agency (Agency) Recommendation was received on December 15, 1975. The Petition also seeks to have the time for placing the sludge disposal site in operation extended until October 1, 1977, and to have the Petitioner's Bond rescinded and returned.

At the time of the Board Order of March 8, 1973, PCB 71-355, it was the understanding of the parties and the Board that relocation of the stream would be the most economical method of cleaning the stream and would have environmental advantages, PCB 71-355 at 4. (March 8, 1973) However, it has become apparent that the situation has changed in the last two years. Lime sludge is no longer discharged into the Creek from the Jacksonville Water Treatment Plant. The lime sludge deposits are now concentrated in an area just down stream from the old sludge outfall pipe, although the sludge still exists intermittently all along the Creek bank (Pet. Ex. A, 2-3). The total lime sludge deposits in the area consist of approximately 93 cubic yards (Pet. Ex. A at 3).

According to a study performed by Dr. Loren D. Moehn (Pet. Ex. B), the pH of 7-8 was within acceptable parameters, as was the total alkalinity (mean 158.3 ppm). In addition there is an abundance of dissolved oxygen (average 13.9 ppm) as well as a healthy concentration of CO₂ (trace). Green algae was present and the study found, based upon simple sampling techniques, five different fish families and ten different fish species including a blackside darter, which is very intolerant to water pollution.

(2)

The conclusion of two studies, in which the Agency concurs, is that relocation of the stream would have a potentially more harmful effect than the lime sludge. Nor would removal of the remaining sludge deposits serve any useful purpose as the Creek has shown a propensity to clean itself and the cost of removal would be prohibitive. The Agency states that the removal of sludge would "necessitate loss of timber along the Creek, damage open fields, and possibly cause erosion Thus more environmental harm could occur with relocating and clearing the Creek" (Rec. 6).

The Agency states that it has no objection to an October 1, 1977 operating date for the new sludge disposal site which has already received preliminary Agency approval as long as no sludge enters the stream and all appropriate permits are obtained.

Further, the Agency confirms that Petitioner has complied with paragraphs 1 and 2 of the Board's Order of May 23, 1972, as amended June 20, 1972, and that the bond should be returned. Petitioner has completed construction of its lime sludge beds, including the recycling of the effluent of its water treatment plant and has purchased a site for future disposal of the lime sludge.

The Board finds that Jacksonville has substantially completed the requirements of the Board Order in PCB 71-355 and that the purpose for the posting of the performance bond therein has been achieved. The date for placing the disposal site in operation shall be extended to October 1, 1977, and a variance from the requirement of relocating the Creek will be granted.

With respect to the sludge deposits, however, the Board finds that the mere allegation of prohibitive costs and environmental harm involved with their removal is not persuasive, especially considering the potential harm to children playing in the creek. Therefore the Board will retain jurisdiction of this proceeding for the purpose of entertaining briefs on the issue of cost of removal of the sludge deposits in the stream bed and the environmental harm therefrom, and whether or not the Board has authority to order clean up of wastes to protect the public from harm not associated with the environmental aspect of that waste. (See Agency recommendation, ¶12, page 6.)

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

ORDER

It is the Order of the Pollution Control Board that:

a) Petitioner, City of Jacksonville, be and hereby is granted variance from that part of the Board's Order in PCB 71-355 of May 23, 1972, as amended June 20, 1972, which required relocation of Mauvaise Terre Creek; and

b) Petitioner shall place its new lime sludge disposal site in operation on or before October 1, 1977 provided that no lime sludge be permitted to enter Mauvaise Terre Creek and all appropriate Agency permits shall be obtained in a timely manner; and

c) The Bond of \$10, 000 furnished by Petitioner in PCB 71-355 be and hereby is rescinded and is ordered returned to Petitioner; and

d) The parties will study the sludge deposit situation with respect to the following questions and present briefs to the Board by June 1, 1976:

1) The cost of removal of the deposits.

2) The environmental harm that may be done by such removal.

3) Whether the Board has authority to require removal of wastes to protect the public from harm not associated with the environmental aspect of that waste.

e) The Board retains jurisdiction in this matter for the purpose aforesaid.

IT IS SO ORDERED.

Mr. Zeitlin Concurs in the Opinion.

Mr. Young abstains.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 8th day of January, 1975 by a vote of 3-0.


Christan L. Moffett, Clerk
Illinois Pollution Control Board