

ILLINOIS POLLUTION CONTROL BOARD

October 10, 1974

INDIAN SPRINGS FARM, INC.)
 Petitioner,)
)
 v.) PCB 74-254
)
ENVIRONMENTAL PROTECTION AGENCY,)
 Respondent.)

INTERIM ORDER OF THE BOARD (by Dr. Odell)

On July 8, 1974, Indian Springs Farm, Inc. (Indian Springs) filed a Petition for Variance with the Pollution Control Board (Board). Petitioner sought relief from Rule 203(h) of the Illinois Water Pollution Regulations (Chapter Three). It wanted to administer 165 gallons of the fish toxicant, trade named Syn-Pren-Fish, to Windfall Lake and three artificial ponds owned near Danville, Illinois. Syn-Pren-Fish consists of 2 1/2% emulsifiable rotenone and 2 1/2% sulfoxide. Rule 203(h) states: "Any substance toxic to aquatic life shall not exceed one-tenth of the 48-hour median tolerance limit (48-hr. TLM) for native fish or essential fish food organisms." Petitioner hopes to eliminate large populations of carp and gizzard shad and restock the waters with game fish for recreational fishing.

On July 11, 1974, the Board held that the Petition for Variance contained insufficient information to enable a determination to be made on the request. Specifically, the Petitioner did not reveal whether the lake and three ponds are used or are connected to a public water supply. In addition, the amounts of rotenone and sulfoxide expected to flow into Windfall Creek were not given; the effect of these levels on aquatic life or drinking water was not indicated.

On July 31, 1974, Indian Springs filed its Amended Petition for Variance. Petitioner stated that the waters are not used as a public water supply and that treatment would be undertaken when no overflow to lower bodies of water would occur. Treatment will be administered by a fish and game biologist from the Illinois Department of Conservation. Petitioner concluded by stating that time was of the essence so that the treatment could be performed during the existing no-overflow period.

Almost two months later, on September 20, 1974, the Environmental Protection Agency (Agency) filed its Recommendation with the Board. The Agency recommended in pertinent part that the Petition for Variance be denied or, in the alternative, be dismissed until:

- " (b) Petitioner agrees to close Windfall Lake, the ponds and surrounding land area to all primary and secondary contact uses, including but not limited to swimming, boating, fishing and camping during the period in which disposal of the dead fish is occurring. And Petitioner adequately posts its property to notify the public that its facilities are not available for use during the above prescribed periods;
- " (c) Petitioner presents a method for disposal of the dead fish in a manner acceptable" to the Board.
- " (d) Petitioner provides information as to the title holder of record of the northern most tip of Windfall Lake consisting of four point five (4.5) acres, and proves by affidavit or otherwise that Petitioner is authorized to treat the entire area of Lake Windfall consisting of thirty (30.0) acres with the fish toxicant, Syn-Pren-Fish."

It is within the Board's power to grant variances when to do so will not imperil the public health or welfare. While we do not approve of the dilatory manner in which the Agency processed Indian Springs' Amended Petition for Variance, the questions raised by the Agency need to be answered. Prompt action by the Board and Petitioner still permits resolution of these issues before winter weather arrives.

Petitioner is asked to promptly waive for 30 additional days the 90-day requirement for final action in variance petitions specified under Section 38 of the Environmental Protection Act. Failure to file the waiver by October 22 will make the Petition subject to dismissal for inadequacy.

ORDER

The Petitioner is directed to reply to the Board within 21 days from the adoption of this Order on the Agency's inquiries (b) through (d) as stated earlier in this Opinion. In addition, the Petitioner shall provide to the Board sufficient information to enable us to determine whether the concentration of Syn-Pren-Fish in Windfall Lake and the three ponds will be excessive. Evidence submitted might include an affidavit from the biologist who will administer the toxicant. Calculation of the total volume of the water in Lake Windfall and the three ponds must be included.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 10th day of October, 1974, by a vote of 5 to 0.


Christan L. Moffett