

ILLINOIS POLLUTION CONTROL BOARD
September 6, 1973

REYNOLDS METALS COMPANY)
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 v.) PCB 73-235
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 ENVIRONMENTAL PROTECTION AGENCY)
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OPINION AND ORDER OF THE BOARD (by Mr. Dumelle)

Messrs. Hackbert, Rooks, Pitts, Fullagar & Poust, by Mr. Clifton A. Lake, appeared on behalf of the Petitioner, Mr. John Slattery and Mr. Michael A. Benedetto, Jr., Assistant Attorney Generals, Environmental Control Division, appeared on behalf of the Respondent

Petition for variance from certain of the Water Pollution Regulation was filed June 1, 1973 for the West Outfall Treatment Plant of the Reynolds Metals Company in McCook. On July 6, 1973 the Environmental Protection Agency filed its recommendation calling for a denial on part of the variance and a grant of part. Public hearing was held on July 27, 1973.

This case rises from the Board's order in PCB 72-518 of April 12, 1973 (opinion of May 3, 1973). We granted the petitioner's motion to incorporate that entire record into these proceedings.

Reynolds asks for variance as follows:

- a) From the requirements of Rule 1002 so as to enable the Agency to approve its project completion schedule for compliance with Rule 404(c) with a November 3, 1974 compliance date.
- b) From the requirements of Rule 404(c) until November 3, 1974.
- c) Extension of the existing variance from Rule 903(a) until such time as the Agency shall approve the petitioner's project completion schedule pursuant to variance requested and issue an operating permit to petitioner for the West Outfall Treatment Plant.

The Agency recommended approval of the Rule 1002 variance and denial of the Rule 903(a) request because of failure to re-submit its operating permit application. It also recommends denial of Rule 404(c) as being a self-imposed hardship because of delay. The Agency further states that it does not agree with the petitioner that it is governed by Rule 602(d)(2) but believes that Rule 602(d)(3)

governs and that storm overflow problems must be corrected by December 31, 1975.

Many of the issues deal with the question of which regulation is applicable. Petitioner requests variance from Rule 404(c) in order to bring its suspended solids discharge from 26 mg/l to 12 mg/l (Petition, Weston Report of May 14, 1973, p. 4). Rule 404(c)(ii) gives the effective date for sources with a dilution ratio between two-to-one and less than five-to-one as December 31, 1974 to achieve 12 mg/l. The Reynolds dilution ratio is four-to-one and thus falls within the range of this regulation (R. 46-7). The variance request from 404(c) until November 3, 1974 is thus moot as is the related Rule 1002 request.

We are left then only with the variance request from Rule 903(a) which requires an operating permit for an existing treatment plant. We had previously granted a variance until July 31, 1973 and ordinarily would not be disposed to extend this variance. Reynolds had from April 12, 1973 to July 31, 1973 to submit its materials for an operating permit and for reasons not clear in the record did not do so. Perhaps with Rule 404(c) being moot, no impediment now exists. However, as we said in the opinion in PCB 72-518

We take the position that a denial would serve no useful purpose at this point.

We again grant a variance from Rule 903(a) to run only until September 30, 1973. That should be sufficient time for Reynolds to resubmit its operating permit application to the Agency.

Lastly, we do not agree with Reynolds and we do agree with the Agency that the applicable storm water overflow rule is Rule 602(d)(3) and the applicable date is December 31, 1975. Reynolds argues that McCook is wholly within The Metropolitan Sanitary District of Greater Chicago and that 602(d)(2) applies and consequently a deadline date of December 31, 1977 is applicable. The Agency argues that it is necessary to discharge industrial wastewater to the MSDGC in order to be eligible for the later date.

Neither are correct. The 1977 date was set by the Board for the storm water overflows owned or subject to control by the MSDGC in light of the long period and large amounts of money required to build an "Underflow Plan" or any other "Deep Tunnel" control variant. A direct discharging industry, within the MSDGC with a combined storm problem of its own, would be expected to solve its problem in the same time frame (by December 31, 1975) as an industry located anywhere else in Illinois also discharging to a waterway. Since Reynolds did not make its case for the variance on Rule 602(d)(3) we will not rule on it in this proceeding. Indeed it would be premature to do so because the December 31, 1975 deadline is farther off than the 12-month period within which the Board can grant a variance.

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

ORDER

1. Variance requests as to Rules 404(c) and 1002 are dismissed as moot without prejudice.
2. Variance from Rule 903(a) is granted for the period from July 31, 1973 to September 30, 1973.

IT IS SO ORDERED.

Mr. Odell abstains.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order was adopted on the 6th day of September, 1973 by a vote of 3-0.


Christan L. Moffett, Clerk
Illinois Pollution Control Board

