

ILLINOIS POLLUTION CONTROL BOARD

July 12, 1973

ENVIRONMENTAL PROTECTION AGENCY,)
)
 Complainant,)
)
 vs.) PCB 72-185
)
 SPINNEY RUN FARMS,)
)
 Respondent.)
)
 SPINNEY RUN FARMS,)
)
 Petitioner,)
)
 vs.) PCB 72-327
)
 ENVIRONMENTAL PROTECTION AGENCY,)
)
 Respondent.)

Lee Campbell, Assistant Attorney General for the EPA
Joseph Hammer and Mark Beaubien, Attorneys for Spinney Run Farms

OPINION AND ORDER OF THE BOARD (by Mr. Henss)

An enforcement action of the Environmental Protection Agency and a Petition for Variance filed by Spinney Run Farms were consolidated for hearing and will be considered together in this Opinion.

Spinney Run Farms operates a milk processing and bottling plant 5 days per week on Route 63 north of Libertyville in Lake County, Illinois. Equipment at the plant includes bulk milk storage facilities, pasteurizing and bottling apparatus, cooling equipment and a waste water treatment plant.

Respondent's waste water treatment plant consists of holding tanks, grit chamber, aeration tank, settling tank, chlorine contact tank and sludge holding tank. The treatment plant has a designed capacity of 15,000 gallons per day for the treatment and disposal of waste water generated during the milk processing operation, general cleansing of the milk processing plant environs, and waste produced by the plant employees. Effluent from the waste treatment plant is discharged to a community tile and then to a small inlet on the west bank of the Des Plaines River.

The EPA alleges that Respondent, in the operation of its waste treatment plant, has caused or allowed water pollution on an least five specific dates since July 1, 1970 in violation of Section 12(a) of the Environmental Protection Act; failed to meet minimum conditions as to water quality from July 1, 1970 to April 16, 1972 in violation of Rule 1.03(a), (b), and (c) of SWB-11; since July 1, 1970 has discharged wastes with a BOD₅ in excess of 30 mg/l, total suspended solids in excess of 35 mg/l (since April 16, 1972 in excess of 37 mg/l), and fecal coliform in excess of 400 per 100 mg. liquid, all in violation of Rule 1.08, paragraphs 10(a) and 11(b) of SWB-11 and Rules 404(a) and 405 of the Water Pollution Regulations of Illinois; has substantially failed to complete removal of settleable solids, floating debris, oil, grease, scum, sludge solids and coal, odor and turbidity to below obvious levels, all in violation of Rule 1.08, paragraph 10(b) of SWB-11. The Complaint further charges that Respondent failed to obtain required permits before installation of a grit separator in 1971 in violation of Section 12(b) of the Act; discharged readily settleable solids, floating debris, odor producing substances having visibly greater color or turbidity than the receiving waters since April 16, 1972 in violation of Rule 403 of the Water Pollution Regulations of Illinois; from February 4, 1972, failed to provide a properly certified sewage treatment plant operator in violation of Rule 1.02 of SWB-2; and, since April 16, 1972, failed to submit complete operation reports in violation of Rule 501(a) of the Water Pollution Regulations.

After the Agency Complaint was filed, Respondent filed its Petition for Variance. Specifically, the petition asks for variance from Rules 403, 404(a), 404(c), 405, and 901(a) of the Water Pollution Regulations of Illinois "until such time as the expanded and improved facilities are tested, operative and experimental work has been concluded".

Stipulated exhibits reveal that the present treatment plant was constructed in 1963 under authority of a Sanitary Water Board permit. This construction had been preceded by investigations conducted by the Lake County Health Department, the Illinois Department of Conservation and the Illinois Department of Public Health. Correspondence following the construction reveals that the plant did not perform as expected and continued to be a target of surveillance activities.

Respondent's petition states that current hydraulic loading varies from 1200 to 40,000 gallons per day while the organic loading ranges from 800 to 2,000 BOD₅. The reason given for such fluctuations is that the amount of bulk milk received varies widely from day to day. In order to correct the overloaded conditions, Spinney Run Farms will expand the present plant to accommodate a hydraulic loading of 60,000 gallons per day. This is to be accomplished by installing new pumps, a new 60,000 gallon aeration

basin with mechanical aerator, a new clarifier with mechanical sludge removal equipment, a horizontal multiplex filter for tertiary treatment of the effluent, and aerobic digester and drying beds, and alteration of the present aeration tank to a chlorine contact basin. Petitioner estimates the capital investment for the new facilities to be about \$100,000 and the increased annual operating cost to be about \$14,450. Petitioner gave the following time schedule for bringing the facility into compliance:

a. Preliminary report	August 15, 1972
b. EPA review and approval	October 30, 1972
c. Land acquisition	None Required
d. Financing	October 1, 1972
e. Final plans, specifications	September 15, 1972
f. Contract	October 1, 1972
g. Start construction	October 15, 1972
h. Complete construction	December 15, 1972
i. Operate	December 31, 1972

Testimony during four public hearings on the consolidated cases indicates that Spinney Run Farms had fallen several months behind its time schedule at the outset. The preliminary report was not submitted to the EPA until about October 30, 1972 thereby creating a need for variance until March 30, 1973 (Nov. 28, R. 26). Formal documents requesting the longer variance have not been filed by Petitioner, but we construe Respondent's evidence as an amendment requesting variance to March 30, 1973.

Respondent has denied the EPA charges and contends that the pollution found near Respondent's discharge point could have been caused by the nearby Gray's Lake Sewage treatment plant. The Gray's Lake plant discharges 20 times the volume of Spinney Run Farms. Respondent also contends that "others" added sewage to the community drain tile before discharge to the Des Plaines River (August 23, R. 69).

Agency exhibits (stipulated) clearly prove the pollution of the Des Plaines River and effluent violations both at Respondent's discharge point and in the community drain tile. Specifically, we note that on the dates alleged, Respondent's effluent ranged from 49 to 378 mg/l for BOD₅ (Standard is 30 mg/l), from 30 to 430 mg/l for total suspended solids (current Standard is 37 mg/l), and from 4,200 to 200,000 per 100 ml. for fecal coliform (Standard is 400 per 100 ml.). Agency photographs substantiate the charges regarding the general appearance of the effluent at Respondent's discharge point and at the point where the community drain tile discharges to the River. The impact of the effluent on the Des Plaines River is apparent in the analysis of samples taken on June 22, 1971:

	<u>Point 1 (30 feet Upstream of Discharge)</u>	<u>Point 2 (Sample of Discharge of Effluent)</u>	<u>Point 3 (30 ft. Downstream of Discharge)</u>
pH	8.7	6.5	8.0
Total Suspended Solids	68 mg/l	200 mg/l	125 mg/l
BOD	6 mg/l	60 mg/l	70 mg/l
Fecal Coliform	6000/100 ml.	600,000/100 ml.	28,000/100 ml

However, the Agency evidence (August 14, 1972 investigation) substantiates Respondent's claim that additional material not from Respondent's plant enters the community field tile prior to discharge to the Des Plaines River. Laboratory analyses revealed the following:

	<u>Point 1 (weir overflow at Respondent's treatment plant)</u>	<u>Point 2 (effluent in community tile at point of discharge to Des Plaines River)</u>
pH	7.3	7.4
Total Suspended Solids	350 mg/l	190 mg/l
BOD	460 mg/l	310 mg/l
Fecal Coliform	48,000/100 ml.	300,000/1000 ml.

The large increase in fecal coliform indicates that others had connected to the tile and were discharging household waste. It appears that Spinney Run Farms is in violation of the effluent standard and is joined by "others" in the area in polluting the Des Plaines River.

Agency records show no permit application having been filed by Respondent since 1963. A grit separator was installed on March 14, 1971 without an Agency permit (October 26, R. 51). Respondent argues that the device was installed to reduce downtime of the pump and not as a pollution control device. We are not convinced that this was its sole use. Clearly, the intent was to reduce the amount of grit or solids reaching a particular section of the plant. Although installation of the grit separator would reduce pump erosion, the device also reduced the amount of solids escaping with Respondent's effluent. This would qualify it as a pollution control device which requires an Agency permit.

The EPA introduced a number of Respondent's operating reports upon which the Agency had written "I" or "Inc.". An Agency witness testified that this notation is made when the EPA believes a report lacks certain required data. Such a report is classified as

incomplete. Notations on Respondent's reports show that residual chlorine data were missing from some reports and suspended solids data were missing from all reports. The record is not clear whether the 12 reports submitted are the total of Respondent's reports for 1972 or whether only a selected few were presented. Reports submitted to the Agency under Rule 501(a) of the Water Regulations require the use of Technical Policy 20-24 (revised July 1971) for guidelines in the submission of required data and information. Based on designed plant capacity, certain data may be required on a daily, weekly, or twice weekly schedule. Table 2 of the Technical Policy indicates that Respondent was required to submit both weekly and twice weekly reports.

Although Spinney Run was required to submit suspended solids data, there is no place on the EPA form designated for the entry of such information. The EPA witness testified that when a report is received without necessary data, normal policy dictates the sending of a postcard advising the submitter that the report was incomplete. The postcard does not detail what portion of the report was incomplete. The submitter then must call the appropriate Agency office to determine what caused the report to be classified incomplete. Here, neither the form nor the postcard referred to the need for suspended solids data. Respondent acknowledged receiving such Agency postcards, but did not contact the Agency to determine why the reports were labeled incomplete because "confused as to who to contact" (October 26, R. 47).

Such confusion is understandable where government procedures and forms are not designed to be of assistance. We find that Spinney Run Farms failed to provide the information required by the Regulations; but because of the inadequacy of the forms and notice, no penalty will be imposed for that violation. We suggest that the Agency find a better way of notifying persons of the shortcomings of their reports.

The Agency did not offer evidence of Respondent's failure to employ a properly certified treatment plant operator. Therefore, we dismiss that portion of the Complaint.

Respondent's President and General Manager, Raymond Alderman, testified that denial of a variance would work a hardship on his company and many people. Spinney Run Farms is said to be the only remaining bulk milk processor in Lake County. Alderman testified that about 64 plant employees, 118 farmers who supply the bulk milk, and 16 vendors and contract haulers would be affected. Respondent's gross sales for the first 8 months of 1972 were in excess of \$4 million. Local farmers were paid nearly \$3 million for bulk milk during this period. Purchases by Respondent in the community during the period were about \$175,000. Total plant worth excluding

land is \$800,000. Respondent indicated that the cost of providing new waste treatment equipment did not present a serious problem for the company.

In designing the expansion of Spinney Run's treatment plant, consideration has apparently been given to a planned expansion by the North Shore Sanitary District of the Gurnee plant. A consulting engineer, who testified on behalf of Spinney Run, said that after plant modification, Respondent's effluent would qualify for discharge into a Gurnee interceptor sewer planned to cross Spinney Run Farms. William Byers, General Manager and Chief Engineer for the NSSD, verified that such an interceptor sewer was currently planned and that in his opinion, Respondent's effluent would be of acceptable quality after installation of the new waste treatment equipment. The Gurnee project is scheduled for completion by December 31, 1974. The consulting engineer felt that the Spinney Run expansion would be sufficient to meet only the current standards and not any more stringent than those currently required. We approve the ultimate goal of discharging the Spinney Run Farm effluent to the Gurnee interceptor sewer. Spinney Run Farms shall at an early date contact officials of the NSSD Gurnee plant in an effort to expedite connection of its sewer line to the NSSD interceptor sewer line leading to the Gurnee plant.

The evidence is sufficient for the grant of a variance from the Rules specified, except for Rules 901(a) and 404(c). Rule 901(a) merely requires Respondent to obtain a construction permit before modifying its treatment plant. We see no reason to exclude Respondent from this requirement and therefore, deny this portion of the variance petition. Rule 404(c) applies to effluent quality from sources unlike Spinney Run Farms or compliance dates beyond the March 30, 1973 date requested by Petitioner. We find this portion of the variance request to be inappropriate and dismiss it without prejudice. The variance expires March 30, 1973, the projected deadline for completion of the treatment plant expansion.

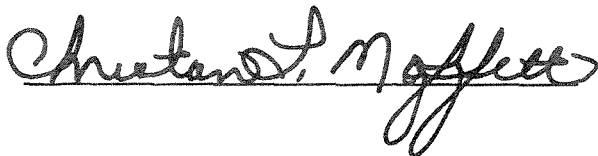
Respondent is adjudged to have violated all Rules and Regulations cited in the Agency Complaint except for that portion pertaining to operator certification. For these violations a monetary penalty in the amount of \$2000 shall be imposed. Respondent shall cease and desist from its pollution violations following expiration of the variance and shall comply with the permit testing, monitoring and reporting requirements.

ORDER

It is the Order of the Board that:

1. Spinney Run Farms shall pay to the State of Illinois by August 10, 1973 the sum of \$2,000 as a penalty for the violations found in this proceeding. Penalty payment by certified check or money order payable to the State of Illinois shall be made to: Fiscal Services Division, Illinois EPA, 2200 Churchill Road, Springfield, Illinois 62706.
2. Spinney Run Farms is granted variance from Rules 403, 404(a) and 405 of the Water Pollution Rules and Regulations of Illinois from October 30, 1972 until March 30, 1973 for the operation of its waste water treatment plant, but shall comply with permit requirements and any testing, monitoring, and reporting requirements for experimental waste water treatment.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order was adopted this 12th day of July, 1973 by a vote of 4 to 0.


Christan L. Moffett