

ILLINOIS POLLUTION CONTROL BOARD
August 15, 1972

ELGIN SANITARY DISTRICT)
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 v.) #72-211
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 ENVIRONMENTAL PROTECTION AGENCY)

Opinion and Order of the Board (by Mr. Currie):

The Elgin Sanitary District operates a secondary sewage treatment plant providing activated sludge treatment to a portion of the flow (2.5 mgd) and trickling filter treatment to the rest (6.1 mgd) before discharge to the Fox River. The implementation plan for Rules and Regulations SWB-11, adopted by the Sanitary Water Board in 1967, imposed an effluent standard of 20 mg/l BOD and 25 mg/l suspended solids for municipal plants on the Fox, with stricter requirements for those having a stream-to-effluent dilution ratio of less than 2 to 1. (SWB-11, Rule 1.08 ¶11; see also Technical Release 20-22 (1968).) Dischargers having less than secondary treatment were given future compliance dates; the Elgin Sanitary District, which already had secondary treatment, was not. Our new Rule 404(b) makes the same standard effective throughout the State, with certain exceptions not here material, by July 1, 1972 or such earlier date as may have been prescribed by earlier rules (PCB Regs., Ch. 3, Rule 404(b).)

The District's first petition (#72-138) recited that the plant effluent had averaged 37 mg/l BOD and 34 mg/l suspended solids from March 1971 through February 1972, with higher values for same months; reported on the status of the District's program for upgrading the secondary facilities to meet the standard; and asked for a year's extension of the deadline of July, 1972, which was attributed to Rules and Regulations SWB-14.*

A revised petition (#72-211) was later filed, in light of our amended regulations, requesting specifically a year's extension of the alleged July 1, 1973 deadline of the new Rule 404(b) and expressly allowing the Board 90 days from the

*SWB-14, with its July 1972 date, actually applied only to waters not covered by earlier regulations such as SWB-11.

amended filing in which to decide the case. We rejected an Agency motion to dismiss for failure to file a procedurally adequate petition (June 27, 1972).

The Agency recommends that we deny the petition on the ground that no showing has been made to justify the failure to meet the applicable deadline. We agree for two reasons.

First, as we have often held, the mere failure to meet a deadline does not justify a variance; if it did every violation would be its own excuse. Decatur Sanitary District v. EPA, #71-37 (March 2, 1971). The District has not alleged any reason for its delay in meeting the standard, which was adopted as long ago as 1967. The present regulation embodying the 1972 completion date (or an earlier one where former regulations so provided) did not suddenly catch the District unawares; the District had had since 1967 to comply. There is no allegation here, as in EPA v. Marion, #71-25 (Oct. 28, 1971), that the improvements were held up by a relevant change in the applicable standard; 20 and 25 were the rule in 1967 and have been ever since.

Second, even though it is clear that further time will be needed to build permanent facilities to meet the standard, there are no allegations to establish that the District cannot meet the 20-25 standard by introducing standard chemicals into its existing tanks to improve precipitation. See North Shore Sanitary District v. EPA, #71-343 (Jan. 31, 1972) for an instance of dramatic improvements by this method.

In the absence of allegations which, if proved, would demonstrate either that the variance is necessary or that the delay is justified, we must dismiss the request without prejudice to such further proceedings as the parties may deem appropriate.

It is so ordered.

I, Christian Moffett, Clerk of the Pollution Control Board, certify that the Board adopted the above Opinion and Order this 15th day of August, 1972, by a vote of 5-0.

Christian L. Moffett