ILLINOIS POLLUTION CONTROL BOARD
September 26, 1972

METROPOLITAN SANITARY DISTRICT OF GREATER CHICAGO	)	
v.	)	#72-110
ENVIRONMENTAL PROTECTION AGENCY	)	

Opinion on Petition to Modify (by Mr. Currie):

On May 23, 1972, we approved the District's program for improvement and ultimate abandonment of the East Chicago Heights Sewage Treatment Plant (4 PCB 561). Our order required the posting of a bond in the amount of the cost of the program, guaranteeing abandonment by May of 1974. The District seeks modification, observing that the cost of the interceptor system that will divert the plant's wastes elsewhere for treatment is $9,800,000 and asking that we reduce the required bond to $500,000 in accord with prior decisions. The District also asks that we extend the compliance date to September 20, 1974, arguing that earlier abandonment of the plant is not possible.

We requested factual information to support the latter request, which we received August 7. Our order allowed the Environmental Protection Agency 20 days after the District filed that information in which to respond (5 PCB July 18, 1972). The 20 days have long since passed with no word from the Agency. The case must nevertheless be decided.

The District's plea that the bond amount be reduced is supported by precedent. A $500,000 bond was required for multiple new precipitators and other improvements costing far more than that amount in Illinois Power Co. v. EPA, # 71-193 et al., 2 PCB 547 (Sept. 30, 1971). Since the bond is subject to forfeiture in whole or in part for failure to comply with the order, we think half a million dollars a sufficient deterrent to delay in the present case.

The May 1974 date for completion of the interceptor was based upon the District's own estimate in its initial petition, #72-24, which was filed in January 1972. This date, the District tells us, was based upon the assumption that

no rights of way had to be acquired from private persons to permit construction because the sewer would run through a "dedicated public way." On February 8, however, the District discovered that thirty additional grants would be necessary because the premises had been dedicated "for highway purposes only." Efforts to obtain the necessary rights of way have proceeded, according to the District's detailed factual submissions, with what we can only view as all reasonable dispatch. In several instances condemnation proceedings were required when no agreement could be reached on a voluntary grant, and the District has employed its quick-take powers. In all the District declares that the additional acquisition problems have caused a six-month delay in the completion of the interceptor, thus justifying an extension to September 20, 1974. See Data in Support of Amended Petition.

We have no basis on which to doubt that the facts are as the District's evidence indicates, and we so find. We conclude that the project has been delayed six months by factors beyond the District's control, and that continued operation of the plant with interim improvements as prescribed by our May 23 order until September 20, 1974, appears justifiable on the facts as they now stand. We do not believe the additional six months is long enough to justify our requiring additional expenditures to meet the advanced treatment standards at East Chicago Heights during construction of the interceptor, especially since the passage of time since our earlier order has delayed the date by which such treatment could be provided. Under the law the variance itself must be reaffirmed annually, to permit us to assess progress toward compliance; today we amend only the date on which the bond is to be subject to forfeiture.

We do point out that it would have been better for all concerned had the District pointed out to us in February, when the right-of-way problems were discovered, that more time was needed before abandonment than was contemplated by the petition then on file. The length of time that violations of the effluent standards would continue was an important factor in our decision whether or not to require interim advanced treatment (cf. Metropolitan Sanitary District (Streamwood) v. EPA, ## 72-111, 72-135, 4 PCB 737 (June 29, 1972)). While we do not say that knowledge of a six-months' delay would have changed our decision in the East Chicago Heights case, it was the District's obligation to present us with all facts relevant to our decision, and in particular to correct the misimpression created by the continuing allegation that the project could be completed by May of 1974. We assume the failure to do so was inadvertent.

On August 9 the District amended its amended petition to allege for the first time that the interim facilities we ordered on line by November 23, 1972 will not be completed until January 22, 1973. No request is made for relief from this order, and there is thus nothing pending before us on the question. Needless to say, our orders are to be obeyed unless varied upon proper petition and proof.

Once more we stress the undesirability of our having to decide cases on the basis of submissions by only one party. The statutory obligation of the Agency to participate in variance cases expresses a strong policy in favor of the protections afforded by more or less adversary proceedings and recognition of the value of an independent investigation. Whatever internal roadblocks make it continually impossible for the Agency or its attorneys in the Attorney General's office to file timely recommendations must be promptly eliminated.

ORDER

Part B of the order of May 23, 1972 in the present case is hereby modified as follows:

1. The completion date to be stated in the bond to assure completion of the abandonment project is extended to September 20, 1974;

2. The amount of the bond to assure completion of the abandonment project shall be $500,000.

I, Christan Moffett, Clerk of the Pollution Control Board, certify that the Board adopted the above Opinion on Petition to Modify this 26th day of September, 1972, by a vote of 5-0.

Christan L. Moffett