ILLINOIS POLLUTION CONTROL BOARD
November 11, 1971

METROPOLITAN SANITARY DISTRICT OF GREATER CHICAGO	)	
v.	)	# 71-183
ENVIRONMENTAL PROTECTION AGENCY	)	

Allan S. Lavin and Paul D. Lindauer for Metropolitan Sanitary District
Roger Ganobcik and Thomas McMahon for the Environmental Protection Agency

Opinion of the Board (by Mr. Currie):

The Metropolitan Sanitary District seeks a variance from the effluent and treatment requirements of Rules and Regulations SWB-14. We deny the variance for reasons given below.

The District operates a small trickling filter plant for sewage treatment at Streamwood. Designed to treat 1.2 million gallons per day, it has become grievously overloaded by the continued allowance of increased waste discharges that there is no capacity to treat. The average dry weather flow is today nearly 20% above capacity, and the overload is greater during rains. Treatment efficiency has declined from 88%, which is reasonably good secondary treatment, to 70% in 1970, which is not (R. 10-12, 18, 37, 129).

Rules and Regulations SWB-14, adopted in 1967, require the construction of additional facilities, quite apart from the question of overload, in order to provide tertiary treatment affording an effluent containing no more than 4 mg/l of biochemical oxygen demand and 5 mg/l of suspended solids, because, as the record here makes clear (R. 145-46), there is so little flow in the receiving stream during portions of the year that the effluent is virtually the entire stream. Provision for control of storm water overflows and bypasses is also required. Submission of plans for these facilities was required in January, 1971; construction contracts were to be let by July; and the facilities are required to be in full operation by July, 1972.

It is from these requirements that the present petition seeks relief. The District has not submitted the plans that were required nearly a year ago, nor awarded the contracts as it was required to do by last July. Even at the date of hearing in October the District did not commit itself to any program for achieving compliance with the regulations. The evidence shows that the District is considering several alternative plans (R. 61-72),

most prominent of which are the construction of a new 7.4 mgd plant with advanced treatment to serve the whole Poplar Creek area (R. 66) and a joint project with the Elgin Sanitary District for expansion of the latter's secondary facilities with discharge of the effluent to the Fox River (R. 72).[1] The Poplar Creek plant was the District's idea, but it ran afoul of the regionalization policies of the Northeastern Illinois Planning Commission, which has refused to approve the plant for federal or state financial aid (R. 80-83, 102). The Elgin Sanitary District has appeared less than enthusiastic about the proposed joint facility (R. 84, 105-06), but at latest word had agreed to participate in a study of the possibility (R. 110). In the meantime pollution goes on. The District testified that even if construction of the Poplar Creek plant--not yet designed--began as soon as is possible today compliance could not be achieved until some time in 1975 (R. 71-72). And the District is not committed to starting that construction.

In place of a program for meeting the tertiary treatment requirement, the District seeks approval of a plan for providing interim improvements to the existing facility in hopes that doing so will make it possible for still more new homes to be connected to the plant, although there is no suggestion that the improvements will come close to complying with what is required. The proposal is to construct facultative lagoon to provide some degree of treatment for flows in excess of the capacity of the trickling filter (R. 12-13). Even at the outset, the lagoon will be incapable of producing an effluent meeting existing standards for secondary treatment (R. 32), much less the tertiary treatment that is required by next July. Further, the District's own evidence is that the performance of the lagoon will progressively degenerate as additional wastes are added, so that by the beginning of 1975--before any permanent facility can be completed according to this record--its treatment efficiency will be little better than that of the presently overloaded trickling filter, and the total flow of effluent will have increased considerably (R. 16, 18, 49, 57). The program also contemplates chlorination of the lagoon effluent in a contact chamber (R. 13), but at least until the time of the hearing the District had no plans to provide adequate retention time for the effluent from the trickling filter itself, which is now given disinfection on the run (R. 39) with the result that the receiving stream is alarmingly high in bacteria.

The essence of a variance, as we have pointed out before (e.g., Swords v. EPA, #70-6, Sept. 2, 1970; Mt. Carmel Public Utility Co. v. EPA, # 71-15, April 14, 1971; Flintkote Co. v. EPA, # 71-68, November 11, 1971), is a firm and adequate program for achieving compliance with the regulations in the shortest

1. The Agency's objection to evidence as to the District's plans for meeting the advanced treatment requirements was misplaced. This, as said below, is what the case is all about.

practicable time. There is no such program here. We have no commitment from the District to build anything to comply with the advanced treatment requirements, for the District has not decided whether to build its own plant or to join with Elgin. We have no date for expected compliance. We are asked to grant an open-ended extension of time for compliance with this extremely important regulation while the District tries once again to get approval for federal and state help. But years have gone by and nothing has been done. As we have held elsewhere, the desire that others help foot the bill is no excuse for continuing to pollute; the obligation is that of the Sanitary District to meet the regulations by whatever means are available (City of Mattoon v. EPA, # 71-8, April 14, 1971; Durand Sanitary District v. EPA, # 71-317, October 14, 1971).

Similarly, while we have had several occasions to express our endorsement of regionalization of sewage treatment in order to avoid the proliferation of uneconomic and unreliable small treatment plants (see DuPage County Regionalization, #R 70-17, proposed regulation and explanation, June 9, 1971; Gages Lake Sanitary District v. EPA, # 71-104, September 16, 1971; EPA v. City of Silvis, # 71-157 (October 18, 1971), we do not believe that necessary measures for the abatement of existing pollution should be generally or long delayed while painful plans are made for joint treatment facilities. In the present case, moreover, the preference of the Planning Commission for the joint facility seems to be based largely upon the fact that under present regulations sewage pumped to the Fox River need be given only secondary treatment, with attendant cost savings. See NIPC letter of Aug. 30, 1971, and attachments. In League of Women Voters v. North Shore Sanitary District, # 70-7, March 31, 1971, we rejected a similar proposal on the ground that the small cost savings did not justify the less adequate treatment. While we do not say the facts relative to Streamwood and Elgin would require us to reach the same conclusion, it is also relevant to note that the present provision for secondary treatment on the Fox is not necessarily immutable; that river has been prominently mentioned for special protection as a scenic river, and it already receives a heavy load of secondary effluents. Dilution with someone else's secondary effluent is not the equivalent of dilution with clean stream water, and additional treatment may be found necessary on the Fox as well.

In short, there is neither an adequate program for complying with SWB-14 nor an adequate excuse for the delays so far incurred in doing so. The case is thus distinguishable from Metropolitan Sanitary District v. EPA, #71-166 (September 16, 1971), (Orland Park), where the delay was due to problems with a contractor's performance and a definite and reasonably short program for compliance was presented.

Moreover, the proposed interim measures are inadequate to provide the best practicable treatment until compliance is achieved. If the problem were simply additional retention time for disinfecting the filter effluent, we could order that to be provided on the basis of the record (R. 40). But the quality of the effluent from the proposed lagoon will be unsatisfactory even at the beginning, and it will be wholly unacceptable long before advanced treatment can be provided. No provision is made, as it was by the same District to deal with an interim situation at Orland Park (Metropolitan Sanitary District v. EPA, # 71-166, supra), for the use of chemicals to aid in precipitation of objectionable materials (R. 46-47). No consideration was given to the possibility, conceded by the District in testimony to be probably more satisfactory, that placing the filter and lagoon in series rather than in parallel might significantly improve overall performance (R. 50-51). Too little is said about dealing with stormwater problems (R. 199-201). The interim program is inadequate.

The Board takes official notice of the issuance in October, 1971 of the "Process Design Manual for Upgrading Existing Wastewater Treatment Plants" by the U.S. Environmental Protection Agency. The Board expects that the District in its further study of ways to upgrade the Streamwood plant will consult this manual and explore and comment on the possible applicability of at least the following methods for improvement of the effluent:

1. Operation of the lagoon in series with the Imhoff-trickling filter plant.

2. Replacement of stone in the trickling filters with plastic media.

3. Addition of chemicals to the Imhoff tank.

4. Addition of chemicals to the final clarifiers.

5. Installation of tube settlers in the Imhoff tank.

6. Installation of tube settlers in the final clarifiers.

In summary, we must deny the variance. We cannot approve a program for complying with the standards, since there is no program. We cannot approve the interim proposal, since it is inadequate. We cannot give the District a shield against possible money penalties for failing to comply with the regulations, or for allowing the present overload to come about, for it has not proved any satisfactory excuse. Cf. Flintkote Co. v. EPA, # 71-68, November 11, 1971. We cannot give permission for the addition of still more wastes, for they cannot adequately be treated. With respect to the question of overload, this is still another case of growth without concern for the provision

of essential services. With respect to the question of tertiary treatment, it is another case where the often illusory hope that someone else will pay the bill has delayed what is necessary to avoid pollution. On both counts the environment is the loser.

Denial of the variance obviously does not require the plant to close; that would be to make the problem far worse. It leaves the District in the same position it put itself in when it missed the deadlines of SWB-14: It is subject to whatever sanctions might be found appropriate in an enforcement proceeding, and it is free to submit a further petition correcting the present deficiencies. If such a petition contemplates a joint project. other parties to the project should be made additional parties Meantime the District would be well advised to get started with dispatch upon adequate interim measures to alleviate the present intolerable situation and upon the construction of whatever it decides is the appropriate means of achieving compliance with the effluent standards of SWB-14.

The petition for variance is denied.

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

I, Christan Moffett, Acting Clerk of the Pollution Control Board, certify that the Board adopted the above Opinion this ____ day of ________________, 1971.

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