

ILLINOIS POLLUTION CONTROL BOARD  
December 21, 1971

CITY OF LINCOLN )  
 )  
 v. ) PCB 71-295  
 )  
 ENVIRONMENTAL PROTECTION AGENCY )

Warren Peters, attorney for the City of Lincoln  
Frederick C. Hopper and Thomas J. Immel, attorneys for the  
Environmental Protection Agency

Opinion and Order of the Board (by Samuel R. Aldrich):

Petition for variance was filed October 1, 1971, by the City of Lincoln, Illinois, requesting a variance of one year from the time schedule contained in Section 14 of Rule 1.08 of Article I of Rules and Regulations SWB-14. The Rule provides a schedule of construction of municipal treatment works improvements to adequately meet the water quality standards by July 1972. The City seeks an extension of time in which to redesign and construct additional facilities at its sewage treatment plant.

Rule 1.08 of SWB-14 requires that by July 1972, municipal treatment plants discharging to small intrastate streams produce an effluent not exceeding 4 mg/l BOD and 5 mg/l suspended solids. The record indicates that the City's present treatment facilities produce an effluent averaging 20 mg/l BOD (R. 41). The present capacity of the sewage treatment plant is 2 1/4 million gallons per day (mgd) for secondary treatment and 5 mgd for primary treatment (R. 42). The average daily flow is 2.14 mgd. During wet weather, the plant's capacity is at times inadequate to handle the combined input of sewage and storm water, with the result that the overflow is passed untreated to the Rubicon Creek (R. 41, 52, 76). Information as to the frequency with which wastes are bypassed and the quantity of wastes bypassed is not available. An inspector for the Agency testified that on one occasion he observed that none of the sewage flowing to the plant was receiving any treatment. The plant operators explained that they had closed down the plant to prevent grit and rags from entering and clogging the raw sewage pumps (R. 80).

Rule 1.08 of SWB-14 requires that plans and specifications for improvements to treatment facilities be submitted 30-33 months prior to the completion date. The latter requirement was met by the City which submitted preliminary plans and specifications on September 23, 1969 (R. 15). These plans called for the construction of two lagoons and of a pumping station to pump the effluent from the present plant plus the first flush of storm water from the combined sewers to the lagoons (R. 24). Provisions were also made for increasing the plant's capacity and for chlorination of the effluent. On September 2, 1970, the Environmental Protection Agency ("Agency") approved the

preliminary engineering report subject to the receipt of final engineering plans (Pet. Ex 1-A).

The City submitted detailed plans and specifications for its proposed improvements on April 26, 1971 (R. 26). A permit was received from the Agency on August 2, 1971 (Pet. Ex. 5). Issuance of the permit was, however, conditioned upon the submittal of engineering plan documents for additional facilities to remove BOD and suspended solids. This condition, denoted Condition #9 in the permit, was imposed pursuant to Technical Policy 20-24 which requires removal of algae from the effluents of waste stabilization ponds. According to the City's petition, that Technical Policy was adopted by the Agency approximately two weeks before the City was issued its permit on August 2, 1971. The City received no notification of the change in policy prior to issuance of the permit (R. 29).

It is Condition #9 from which the City's present difficulty stems. Leonard K. Crawford, a consulting engineer for the City, testified that the requirement for additional treatment would necessitate redesigning the City's proposed facilities. In its petition, the City contends that the requirement that it satisfy Condition #9 would pose an arbitrary and unreasonable hardship upon it: arbitrary, because at present there is no known professional engineering knowledge available to permit compliance; and unreasonable, because the Agency adopted Condition #9 after the City had submitted its plans and specifications on April 26, 1971, and did not inform the City of the change in policy until the permit was issued.

Although knowing of no case in which algae are satisfactorily removed from lagoon effluent on other than an experimental basis, Mr. Crawford was of the opinion that such removal could be accomplished (R. 28, 34). His firm proposed to eliminate the use of the secondary lagoon and to substitute in its place two final settling tanks provided with mechanical sludge removal, and to construct a mixing tank for possible future addition of chemical flocculants (R. 34). Mr. Crawford was of the opinion that the primary lagoon would be a necessary component of any system designed to upgrade the City's effluent (R. 47). Preliminary plans and specifications incorporating the new proposals were submitted to the Agency on November 18, 1971 (Pet. Ex. 7-A). The City now awaits approval of these plans.

Mr. Crawford indicated that once the preliminary plans and specifications were approved, detailed plans could be prepared within sixty days (R. 36). He estimated that construction could probably begin in July of 1972 provided prompt approval of both preliminary and detailed plans was received from the Agency and provided the necessary additional monies could be raised (R. 38, 36). He indicated that the project could then be completed by July of 1973 (R. 38). The City thus requests a variance of one year from the time schedule contained in Rule 1.08 of SWB-14.

There is no question that the City has been placed in a difficult situation by the Agency's new requirements for treatment of lagoon effluents. The City had complied fully with the provisions of Rule 1.08 by the timely submittal of preliminary plans and specifications, only to have the rules changed at the last minute. To require compliance with the original schedule now would impose a substantial hardship on the City. We are therefore persuaded that the City deserves additional time in which to comply with the rules governing effluent criteria. Cf. EPA v. City of Marion, PCB 71-25, (October 28, 1971). The Agency recommends that a variance be granted for a period of six months (Ex. B). The City contends that this is insufficient (R. 104). We agree that the City is likely to need more than six months in view of the technical and financial problems to be overcome. Section 36(b) of the Environmental Protection Act permits the granting of variances for a period not exceeding one year. We will therefore grant to the City a variance of one year from the date the accompanying order is entered, that is, until December 21, 1972. At that time the City may request additional time if the project has not been completed.

We are concerned that the City proceed with the completion of its improvements with all due speed. The evidence indicates that a primary lagoon will have to be built on the same site regardless of what other steps are taken. We will therefore require the City to submit additional information indicating any additional costs that would result from proceeding immediately with the construction of a lagoon and the date by which completion of such a lagoon could be expected. If construction of a lagoon in the near future is feasible we shall require that steps are taken to do so at once.

Finally, we note the objections of several local citizens to the construction of the proposed lagoon. Some of those testifying felt that in the event of flood conditions, the lagoon would threaten water supplies and recreational facilities in the area (R. 100, 102). However, it is not for us to decide the merits of those claims. Section 39 of the Environmental Protection Act grants to the Agency the authority to grant permits for the construction of pollution control facilities upon proof that the facilities will not violate the Act or applicable regulations. In issuing a permit for construction of the facilities originally proposed by the City, the Agency has already indicated its approval of the lagoon. Thus, we can only assume that adequate measures will be taken to assure the safety of the surrounding area.

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

O R D E R

1. A variance from Section 14 of Rule 1.08 of Rules and Regulations SWB-14 until December 21, 1972 is hereby granted to the City of Lincoln, Illinois, for completion of improvements to its sewage treatment facilities.
2. The City of Lincoln shall, by January 15, 1971, submit to the Pollution Control Board an affidavit indicating any additional costs that would result from proceeding immediately with the construction of a primary lagoon and the date by which completion of such a lagoon could be expected.
3. The City of Lincoln shall post a bond or other security in the amount of \$150,000 in a form acceptable to the Agency within 35 days after the date of this Order, such bond to be forfeited in case of failure to comply with the provisions of this Order.
4. The City of Lincoln shall file quarterly reports with the Pollution Control Board on March 1, 1972 and at 3-month intervals thereafter to show progress toward achieving the plan approved by the Agency.

I, Christan Moffett, Acting Clerk of the Pollution Control Board, certify that the above Opinion and Order was adopted on this 21st day of December, 1971 by a vote of 4-0.

  
Christan Moffett  
Acting Clerk