

ILLINOIS POLLUTION CONTROL BOARD  
March 2, 1972

VILLAGE OF LENA )  
 )  
 v. ) PCB 71-384  
 )  
 ENVIRONMENTAL PROTECTION AGENCY )

OPINION OF THE BOARD (by Richard J. Kissel):

The Village of Lena filed a petition for variance with the Board asking for an extension of time within which to design and complete its waste treatment facilities.

The effluent from the Village's waste treatment plant is discharged into a tributary of Yellow Creek, which is itself tributary to the Pecatonica River. While the effluent flow rate from the Village's waste treatment plant is only 130,000 gallons per day, the flow of the tributary to which it discharges is so small that the dilution ratio is less than 1 to 1. Since the tributary is an intrastate stream, SWB-14 applies, and it requires that in situations where the dilution is less than 1 to 1, the effluent must average 4 mg/l BOD and 5 mg/l suspended solids by July, 1972. Presently, the Village's waste treatment plant, which is a trickling filter plant, can accommodate all of the influent (except the digester which is 100% overloaded) and it produces an effluent of 35 mg/l BOD and 25 mg/l suspended solids.

Recognizing that it had to build new facilities providing for tertiary treatment by July 31, 1972, the following sequence of events took place:

A. The Village of Lena entered into an engineering agreement with their consulting engineer April 27, 1970, to prepare plans and specifications for tertiary treatment facilities to bring their effluent in line with State criteria.

B. Additional ground was necessary to provide tertiary treatment facilities, but final purchase and location could not be made until the State Highway Department completed their State Route 20 location hearings, as the proposed route was immediately south of the existing treatment facility. On January 25, 1971, a letter was sent to the Environmental Protection Agency informing them that our plans were held up pending final location of the proposed Route 20.

C. In February of 1971 the State Highway Department finalized their State Route 20 location, and the Village of Lena then purchased six acres of additional land for tertiary treatment facilities.

D. On April 27, 1971, preliminary plans were forwarded to the Environmental Protection Agency office for review and comments before final plans and specifications were completed. These preliminary plans consisted of tertiary lagoons.

E. On July, 1971 WPC Technical Policy 20-24 (Waste Treatment Plant Design Criteria) was revised to require mechanical settling and chemical precipitation of all lagoon effluents.

F. On September 10, 1971, a letter was sent to the Environmental Protection Agency office asking about the status of our preliminary plan review.

G. On September 23, 1971, the Village received a letter from the Environmental Protection Agency office stating the review of our preliminary plans had been completed, and the Village of Lena would have to comply with the revised criteria and furnish mechanical settling and chemical precipitation for the lagoon effluent.

H. In the interim between plan submission on April 27, 1971, and completed plan review on September 23, 1971, the Village of Lena had been studying the Johns-Manville moving bed filter as an alternate solution for the Village of Lena tertiary treatment process. The moving bed filter is a continuous filtration process in which the wastewater moves countercurrent to the filter medium. The system is not shut down for backwash since the spent sand is removed and washed in a separate unit operation and then returned to the filter bed. Village Board members on two separate occasions visited a moving bed filter installation at Manville, New Jersey.

I. The revised criteria change and the technological advances in the moving bed filtration process have caused the Village of Lena to abandon tertiary lagoons and approve the moving bed filter process for tertiary treatment.

J. The Village of Lena on December 1, 1971, received a firm proposal for supplying the hardware for a moving bed filter from Peabody Welles, which has a license to sell from Johns-Manville. They have also guaranteed to meet the EPA criteria of 4 mg/l and 5 mg/l of 5 day BOD and suspended solids respectively. The proposal guarantees delivery of the moving bed filter hardware such that the Village of Lena waste treatment effluent will meet the Water Quality Criteria Standards by December 1, 1972.

It is obvious from the record that the Village has made a good faith effort to meet the July 31, 1972 deadline. It was slowed both by the lack of decision on the part of the State Highway Department on the location of Route 20 and by the Agency's new technical release calling for algae removal among other things. We feel that the Village was justified in its actions, and lacking any proof of harm to the stream, we will grant the variance. [1] An important reason why the variance is granted is that the Village is only asking for a four-month extension. As we said in the Marion case, "Without condoning past lapses, we think it appropriate to encourage those who have fallen behind to make every effort to make up for it. We shall therefore look with some indulgence upon local governments that file programs in the immediate future that will result in compliance within a short time after the ultimate deadline." EPA v. City of Marion, PCB 71-25, opinion dated October 28, 1971. The Agency in its recommendation agreed that the variance should be granted, and therefore the new time schedule of the Village will be as follows:

1. Completion of plans and specifications and submission to the Agency by March 15, 1972.
2. Award of construction contracts by July 1, 1972.
3. Completion of project by December 1, 1972.

One other issue must be dealt with. In its petition, the Village requests that the Board "order the Village of Lena, Illinois, to issue General Obligation Bonds to finance the required waste treatment facilities" as provided for in Section 46 of the Act. The Agency recommends that before the Board enter any such "order to issue bonds" it hold a public hearing on the necessity for the bonds and require as a preliminary condition that the citizens defeat a referendum. Unfortunately, neither the Village or the Agency understood this procedural position of the Board as set forth in Section 46 of the Act. Essentially, Section 46 of the Act does not give the power to the Board to say "issue bonds", but does give the Board the power to say "abate pollution". Once having said this, the municipality must take all steps ordered by the Board and if necessary, issue non-referendum bonds. In

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[1] The petition alleged that the stream is not used for recreational purposes until Freeport, Illinois, which is eighteen miles away.

other words, under Section 46 the Board does not tell the city how to raise money, but Section 46 does remove the lack of money by a municipality as an excuse. As we said in the Marion case:

" . . . we leave the question of how to raise money to the City, but the money must be raised! See Ruth v. Aurora Sanitary District, 17 Ill. 2d 11, 158 N.E. 2d 601 (1959)." Environmental Protection Agency v. City of Marion, PCB 71-25, opinion dated October 28, 1971.

Thus, the issue of whether the Village must issue non-referendum bonds is out of our hands. The Village has been told and by this order is being told, that it must abate pollution. With the relief provided by Section 46, lack of money is no excuse. We feel, therefore, that no benefit would be served by a Board hearing, since the only issue to be decided would be whether pollution should be abated. We can decide that without a hearing. We will require that the Village tell us how they are going to finance this project. This type of report was also made mandatory in the Marion case, *supra*.

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

#### O R D E R

1. The petition of the Village of Lena for a variance extending the date for compliance with the treatment and effluent standards of SWB-14 until December 1, 1972 is hereby granted on condition that the provisions of this Order are met.

2. The Village of Lena shall abate its discharge of inadequately treated sewage in accordance with its revised program with the following schedule:

- a) Completion of plans and specifications and submission to Agency : By March 15, 1972
- b) Award of construction contracts : By July 1, 1972
- c) Completion of project as outlined by the Village : By December 1, 1972

3. Within forty-five (45) days of the receipt of this Order, the Village shall submit to the Board and the Agency a plan assuring financing of the program herein approved, together with a study by bond counsel discussing the various financing alternatives available.

I, Christan L. Moffett, Clerk of the Pollution Control Board, certify that the Board adopted the above Opinion and Order this 2<sup>nd</sup> day of March, 1972 by a vote of 4-0.

*Christan L. Moffett*

