

ILLINOIS POLLUTION CONTROL BOARD
July 11, 1985

STAUFFER CHEMICAL COMPANY,)
)
 Petitioner,)
)
 v.) PCB 85-26
)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

OPINION AND ORDER OF THE BOARD (by R. Flemal):

This matter comes before the Board upon petition for extension of variance filed by Stauffer Chemical Company ("Stauffer") on March 1, 1985. Stauffer requested that the Board allow the company a one-year extension of a five-year variance which the Board previously granted on March 6, 1980, in the matter of PCB 79-230. The 1980 order consisted, inter alia, of a five-year variance from compliance with 35 Ill. Adm. Code 302.208 and 304.105 with respect to the discharge of Total Dissolved Solids (TDS). The present petition was precipitated by expiration of the original variance, which occurred on March 1, 1985. The Illinois Environmental Protection Agency ("Agency") filed its recommendation in this matter on April 9, 1985, recommending that the Board conditionally grant Stauffer's petition. Stauffer filed a response to the Agency's recommendation on April 19, 1985, disagreeing with some of the Agency's conclusions of fact and proposed conditions to the extension of variance. The Agency gave written notice of Stauffer's request for variance but received no comments. Stauffer waived its right to hearing by motion filed April 19, 1985.

Stauffer owns and operates a chemical manufacturing and processing plant in Chicago Heights, Illinois, which produces phosphate compounds and sodium bicarbonate by reacting phosphoric acid with alkalies. These products are sold primarily for use in the food processing industry. The company discharges non-contact cooling water, storm water, and water distilled in its vacuum crystalizer operation from the plant through its outfall #001 to

a storm sewer, which in turns discharges into the State Street Ditch. The ditch, a water of the state*, then joins Thorn Creek.

Stauffer is requesting a one-year extension of the five-year variance so that it may continue to discharge water which causes the water quality standard for TDS concentration of 1000 mg/l, found at 35 Ill. Adm. Code 302.208 to be violated. Stauffer alleges that the primary reason for its past failures to meet the TDS standard was the high background concentration of TDS in the company's cooling water influent, which was drawn from wells in the area. Stauffer further claims, and the Agency does not dispute, that the background level of TDS in the well water was generally over 1,500 mg/l. Stauffer contends that no alternative water supply was available to the company until recently, and that no practicable technologies exist for controlling TDS levels. The company obtained Lake Michigan water, which has lower TDS levels, in November, 1984. Since that time TDS concentrations in both the State Street Ditch and Outfall #001 have decreased but TDS levels above the regulatory level continue to be observed.

Stauffer contends that the requested one-year variance is necessary to dissolve and flush out the remaining solids in its system left over from the well water, and to determine if the company can discharge without causing levels to exceed the 1,000 mg/l TDS standard during seasonal variations. The latter issue pertains to whether Stauffer's "housekeeping" and management efforts will be sufficient to control TDS levels in stormwater runoff from its plant during winter, for example. Stauffer alleges that if the variance extension is denied it must close the Chicago Heights operations permanently, close them temporarily while attempting to control the TDS discharge, or continue to operate and risk civil and criminal enforcement proceedings. Stauffer believes any of these results would be an "arbitrary and unreasonable hardship," and not justified by the "minimal" benefit resulting from termination of the TDS discharges.

The Agency agrees that if Stauffer's recent TDS violations are due to system flushing, the company will bring the TDS levels in its discharges into compliance. Further, the Agency does not deny that no significant environmental degradation would result from the granting of this variance. The Agency does contest, however, Stauffer's claim of hardship, reasoning that the hardship may be self-imposed. Stauffer's original variance was

*In its response to the Agency's recommendation, Stauffer indicated that it has consistently questioned whether State Street Ditch is in fact a "water of the state" for enforcement purposes and that it desired to reserve the right to raise this issue with the Agency and/or the Board at a later time. Stauffer correctly noted that this issue is not presently before the Board.

conditioned, inter alia, on the company's annual submittal to the Agency of reports studying and evaluating new TDS treatment methodologies. Stauffer admits that it failed to file any of these required reports, but contends that such failure was the result of administrative oversight rather than willful or bad faith action. Petitioner further alleges that there have been no significant changes during that period in the technology for controlling TDS. The Agency suggests that if Stauffer had undertaken the studies ordered in 1980 it might not have needed another variance in 1985.

On balance, the Board finds that denial of variance would cause arbitrary or unreasonable hardship. Therefore, the Board grants Stauffer's request for one-year extension of its variance, subject to the conditions discussed below. Ill. Rev. Stat. Ch.111 1/2, par. 1036 (b) requires that a variance may be extended only if satisfactory progress has been shown. The Board is persuaded that such progress has been made, but in so doing does not condone the manner in which Stauffer has done so. Stauffer ignored the Board's 1980 order by failing to file any of the TDS treatment methodology reports that were required under the original variance. Such conduct may have convinced the Board to deny any request for extension of variance by Stauffer had the company been unable to acquire Lake Michigan water by this time. Since Lake Michigan water has been acquired, however, and has diminished TDS levels in the company's discharges, the Board finds the satisfactory progress requirement met. In order to prevent degradation of the State Street Ditch during the variance period, the Board finds it necessary to limit the concentration of TDS in the ditch during that time to 1,850 mg/l. The Board also conditions this extension of variance on the preparation by Stauffer of a compliance program, to be submitted by the company for Agency approval, should Stauffer fail to be in compliance with TDS standards within six months into the period for which the variance applies. This condition ensures that if the use of Lake Michigan water does not in itself allow Stauffer to bring its TDS discharges into compliance, the company will take the steps necessary to do so before the end of the one-year variance period. To grant a series of variances without a plan for compliance would violate the intent of the Illinois Environmental Protection Act and case precedent in this area (e.g. see Monsanto Company v. Pollution Control Board, 67 Ill. 2d 276, 367 N.E. 2d 684, (1977)). As further conditions of this extension of variance, the Board requires Stauffer to continue monitoring TDS levels (as outlined below) and to continue to use reasonable housekeeping and maintenance measures to minimize TDS levels being discharged from the site.

In response to Stauffer's request that its NPDES Permit be modified to reflect the extension of variance, the Board reminds Petitioner that such a determination is within the purview of the Agency. As such the Board will not order this, but rather leave the decision to the Agency.

This Opinion constitutes the Board's findings of fact and conclusion of law in this matter.

ORDER

Stauffer Chemical Company is hereby granted a one-year extension of variance from compliance with 35 Ill. Adm. Code 304.105 as it applies to the total dissolved solids (TDS) limitations of 302.208, subject to the following conditions:

1. This variance will expire one-year from the date of this order;
2. During the period of this variance the concentration of Total Dissolved Solids found in the State Street Ditch shall at no time exceed 1,850 mg/l;
3. That if Stauffer's effluent is not in compliance with TDS standards during the months of October, November, and December of 1985, it shall by January 15 submit to the Agency, at the address given below, a compliance plan calculated to achieve compliance by the end of the variance period;
4. That Stauffer monitor TDS concentrations weekly in the State Street Ditch and monthly in Thorn Creek, with reports of finding made to the Agency at the address given below;
5. That Stauffer use all reasonable housekeeping and maintenance measures necessary to minimize TDS levels in its effluent; and
6. Within forty-five days of the date of this Order, Stauffer shall execute a Certification of Acceptance and Agreement to be bound to the terms and conditions of this variance. This forty-five day period shall be held in abeyance if this matter is appealed. The Certification shall be forwarded to the Illinois Environmental Protection Agency, Compliance Assurance Section, 2200 Churchill Road, Springfield, Illinois, 62706, Attention: James Frost and shall read as follows:

CERTIFICATION

Stauffer Chemical Company (Petitioner) hereby accepts and agrees to be bound by all terms and conditions of the order of the Pollution Control Board in PCB 85-26, dated _____.

Petitioner

By: Authorized Agent

Title

Date

IT IS SO ORDERED

J.D. Dumelle concurred.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 11th day of July, 1985 by a vote of 7-0

Dorothy M. Gunn
Dorothy M. Gunn, Clerk