

ILLINOIS POLLUTION CONTROL BOARD
June 13, 1985

CITY OF WEST CHICAGO,)	
)	
Petitioner,)	
)	
v.)	PCB 85-2
)	
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

OPINION AND ORDER OF THE BOARD (by B. Forcade):

This matter comes to the Board on a January 4, 1985, Petition for Variance and February 19, 1985, Amended Petition for Variance, filed by the City of West Chicago ("West Chicago"). West Chicago seeks a variance for discharges into the West Branch of the DuPage River to cover a period of construction during which it will be improving its existing treatment facilities. Specifically, West Chicago seeks a variance from a prior Board Order in PCB 77-115 Illinois Environmental Protection Agency v. City of West Chicago, January 19, 1978, and from the following Board regulations:

35 Ill. Adm. Code

302.203	Water quality standard - free from unnatural sludge
302.208	Water quality standards for chemical constituents
304.105	Effluents shall not cause water quality violations
304.106	Effluents shall not contain offensive discharges
304.120	Effluent limitations for deoxygenating wastes
304.121	Effluent limitation: 400 fecal coliform/100 ml

West Chicago has not requested a specific ending date for the variance, but has included a compliance plan which calls for the new facilities to be operational by March 31, 1986. On April 19, 1985, the Illinois Environmental Protection Agency ("Agency") filed a recommendation that variance be granted for Outfall No. 002, for a maximum of 15 months, for certain effluent and water quality limitations only during periods of excessive flow, and only if certain interim effluent limitations are met. No objections were received; no hearing was held. On May 28, 1985, West Chicago filed a copy of the Stipulation and Proposal for Settlement in PCB 77-115.

West Chicago's sewage treatment plant is located at the northeast corner of the intersection of Highway Routes 38 and 59. It is bounded by two highways, the west branch of the DuPage River and a forest preserve.

In the 1960's West Chicago constructed a four-acre lagoon, partially aerated by submerged diffusers, to treat the excess flow from the community during storm events. In 1977, West Chicago constructed an additional lagoon to provide detention time for chlorine disinfection of the lagoon effluent. At the same time, the excess flow lagoon was cleaned of sludge deposits and deepened. In 1981, West Chicago started a program of growing hyacinths on the lagoon to remove organics and ammonia. This experiment lasted two years and though it had partial success, the program was abandoned because it took the plants until August or September to become effective, and they had to be removed in October after the first frost killed the plants. In 1983, seven (7) floating aerators were installed in the lagoon to create an "oxygen seal" on the lagoon to reduce odors and provide partial treatment.

In addition to the above, West Chicago has implemented programs that included sewer replacement, joint sealing and storm sewer construction. West Chicago is presently under construction on a new treatment plant that will handle all dry weather flow and some wet weather flow. The plant is scheduled for completion in November 1986. West Chicago has completed planning and design on a program to rehabilitate the existing sanitary sewer system and construct relief sewers and excess flow facilities. The construction related to these projects is scheduled for completion in November, 1986.

West Chicago has applied for and received from the Agency a permit to install new excess flow facilities, including two first flush storage tanks, one excess flow clarifier, a lift station, chemical feed equipment and flow measurement and sampling equipment. (The permit was made contingent on the Board's grant of this variance.) West Chicago asserts, and the Agency agrees, that it does not have room on its plant grounds to construct these facilities unless it partially fills in lagoon #4, its largest lagoon. West Chicago and the Agency assert that the decrease in capacity of lagoon #4 and the construction activities will unavoidably result in degradation of the wastewater that is treated in West Chicago's existing excess flow facilities (Rec., 11-13).

West Chicago believes that as the lagoon is only an occasional use facility, i.e., only during storm events, the impact of a lower quality effluent on the receiving stream should be insignificant, especially as the discharge would occur only when the river has considerable flow. West Chicago intends to continue to provide the best possible treatment during construction. They estimate that the average effluent quality from the lagoon will be degraded to about 50 mg/l BOD and 50 mg/l

SS (Pet., p. 5). The Agency routinely analyzes water samples from 6.5 miles upstream and 3.5 miles downstream of West Chicago's outfall. These samples show the West Branch of the DuPage River in the area to be of average quality. The ratio of West Chicago's effluent to receiving stream flow is greater than one to one but less than five to one. The Agency has been unable to quantify the impact of the variance or determine if it would degrade water quality. The Agency agrees that if variance is denied West Chicago will experience hardship in that it will be unable to construct its excess flow facilities and as a result will be unable to improve the ultimate quality of its effluent. After evaluating the unquantified but temporary degradation of the effluent against the unquantified but permanent improvement, the Agency recommends that the Board grant a variance from certain provisions to allow construction to proceed (Rec., pp. 4-5).

The Board finds that denial of variance would constitute an arbitrary and unreasonable hardship, and that due to the minimal nature of any environmental harm that might be expected to occur this variance should be granted. However, the Board finds that West Chicago's variance request is overly broad and that limitations and conditions requested by the Agency should be imposed (except for language relating to chlorine residual, which are not required by Board regulations).

The only outfall mentioned by West Chicago is Outfall 002 (Pet., p. 3). The Agency requests that variance be restricted to this outfall as it is the only one affected by the lagoon improvements which are the subject of this proceeding. The Board will restrict the variance to Outfall 002. The Agency requests that variance be granted only to cover those periods when flow exceeds the design maximum flow of the treatment plant. The Board will impose this condition. Further, the Agency requests that the Board impose interim effluent conditions that reflect West Chicago's best estimate of anticipated effluent quality (50 mg/l of BOD and 50 mg/l of suspended solids as monthly averages). As these seem to be appropriate and workable conditions to protect the environment, the Board will impose them.

West Chicago has requested variance from 35 Ill. Adm. Code 302.208, which sets water quality standards for over 20 chemical constituents. The Agency asserts that West Chicago has failed to establish that these materials are present in the lagoon discharges and has failed to establish that facility improvements would increase their concentration in the discharges. The Board finds that since the only reference to these parameters is in the request for relief, West Chicago has failed to establish that relief is necessary and will deny the variance for these parameters.

The Agency has requested that relief from enforcement of water quality standards against West Chicago be limited to only those circumstances where West Chicago is in compliance with the

interim effluent limitations imposed in this variance. The Board will impose that condition. However, in any proceeding brought to enforce the terms and conditions of this variance, the Board will evaluate the facts and circumstances, as well as whether compliance was technically possible.

Another major aspect of this proceeding is from what obligations must West Chicago seek relief in order to construct the facility improvements. At the present time, West Chicago is subject to the Board's regulations governing effluent, a Board Order issued in the prior enforcement case EPA v. West Chicago, PCB 77-115, January 19, 1978, and a Consent Decree entered in City of West Chicago v. Douglas Costle, et al., 77 C 1615 (U.S. Dist. Ct., E.D. Ill.). West Chicago and the Agency have indicated that for relief to be meaningful, a modification of the Consent Decree must be obtained and that West Chicago intends to pursue such relief if the Board grants a variance. Consequently, the Board need only address the existing regulations and the prior Board Order.

In 1977, the Agency filed an enforcement action charging, inter alia, that West Chicago's sewage treatment plant violated various regulations regarding effluent quality and caused violations of various water quality standards. A Stipulation and Proposal for Settlement was entered in that case which in paragraphs A and D affected the operations and discharges from lagoon #4. To the extent the aeration and chlorination requirements of paragraph A, and the effluent limitations of paragraph D are in conflict with today's Order, the Board will grant a variance from the prior Order.

West Chicago has stated construction will be completed in November, 1986 (Am. Pet., p. 4), but provided a compliance schedule showing completion of construction and operational status for the sewers, treatment plant and excess flow facilities by December 30, 1985, December 27, 1985, and March 31, 1986, respectively (Pet., p. 4). The Agency has recommended the variance be effective only during the period of construction, but in no event later than 15 months from the date of this Order (i.e., until September 1, 1986). The Board will grant variance from the beginning of construction of the excess flow facility until 90 days after construction is completed, but in no event beyond November 1, 1986.

This Opinion constitutes the Board's findings of facts and conclusions of law in this matter.

ORDER

The City of West Chicago is hereby granted a variance from conditions A and D of the Stipulation and Proposal for Settlement adopted in PCB 77-115, and from 35 Ill. Adm. Code 304.106, 304.120 and 304.121 and from 35 Ill. Adm. Code 304.105 as it applies to 302.203, subject to the following conditions:

- a) This variance shall begin on commencement of construction of improvements to the excess flow facilities and shall continue until 90 days after that construction is completed, but in no event beyond November 1, 1986.
- b) This variance shall be contingent upon either 1) the amendment of the Consent Decree in City of West Chicago v. Douglas Costle et al. 77 C 1615 (N.D. Ill) as proposed in paragraph (a) of West Chicago's January 7, 1985, "Petition for Variance" or 2) the approval by USEPA of a permit modification issued to reflect the provisions of the Board order.
- c) This variance is applicable only to the effluent from Outfall 002, (as described in NPDES Permit IL0023469) and shall only be applicable during periods when the plant exceeds its Design Maximum Flow.
- d) West Chicago's effluent from Outfall 002 shall not exceed:
 - BOD 50 mg/l as a monthly average
 - TSS 50 mg/l as a monthly average
- e) West Chicago shall notify the Agency in writing within five (5) days of the commencement of filling operations in lagoon #4 and shall also report quarterly, with the first report due July 1, 1985, on the progress of the construction of the excess flow facilities.

Those reports shall be sent to:

Illinois Environmental Protection Agency
Division of Water Pollution Control
Compliance Assurance Section
2200 Churchill Road
Springfield, IL 62702
Attention: James Frost

A copy of these reports shall also be sent to:

Illinois Environmental Protection Agency
Division of Water Pollution Control
Field Operations Section
The Intercontinental Center
Suite 600
1701 First Avenue
Maywood, IL 60153
Attention: Theodore Denning

- f) Within 45 days of the date of this Order, the City of West Chicago shall execute a Certification of Acceptance

and Agreement to be bound to all terms and conditions of this variance. Said Certification shall be submitted to the Agency at 2200 Churchill Road, Springfield, Illinois 62706. The 45 day period shall be held in abeyance during any period that this matter is being appealed. The form of said Certification shall be as follows:

CERTIFICATION

I, (We) _____, hereby accept and agree to be bound by all terms and conditions of the Order of the Pollution Control Board in PCB 85-2, June 13, 1985.

Petitioner

Authorized Agent

Title

Date

IT IS SO ORDERED

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board hereby certify that the above Opinion and Order was adopted on the 13th day of June, 1985, by a vote of 7-0.

Dorothy M. Gunn
Dorothy M. Gunn, Clerk
Illinois Pollution Control Board