

ILLINOIS POLLUTION CONTROL BOARD
February 3, 1977

NORTH SHORE SANITARY DISTRICT,)
)
) Petitioner,)
)
) v.) PCB 76-285
)
 ENVIRONMENTAL PROTECTION AGENCY,)
)
) Respondent.)

OPINION AND ORDER OF THE BOARD (by Mr. Zeitlin):

This matter is before the Board on a Variance Petition filed by Petitioner North Shore Sanitary District (NSSD) on November 9, 1976. Respondent Environmental Protection Agency (Agency) filed its Recommendation on January 3, 1977. No hearing was held.

NSSD's Petition is the most recent in a lengthy series seeking relief for the area serviced by its Waukegan Sewage Treatment Plant (STP) from a "sewer ban" imposed on NSSD by this Board some six years ago. League of Women Voters v. NSSD, PCB 70-7,-12,-13,-14, 1 PCB 369 (March 31, 1971). Paragraph 7 of our Order in League of Women Voters provided that,

"The District shall not permit any additions to present sewer connections, or new sewer connections, to its facilities until the District can demonstrate to the Board that it can adequately treat the wastes from those new sources so as not to violate the Environmental Protection Act, or the Rules and Regulations promulgated thereunder."

In NSSD v. EPA, PCB 71-343, 3 PCB 541 (Jan. 31, 1972) (Amended Order March 2, 1972, 3 PCB 697), the Board allowed 13,333 Population Equivalents (PE) for the Waukegan STP. That Variance grant, based on hardship to persons other than the District itself, was strictly conditioned and continued a prohibition on connections upstream of overloaded sewers. See, 3 PCB at 552, 558; 3 PCB at 702.

The following year the Board extended the Variance granted in PCB 71-343 for another year, inasmuch as only 180 additional hook-up permits (1,460 PE) for connections tributary to the Waukegan STP had been issued. NSSD v. EPA, PCB 72-451, 7 PCB 107 (Feb. 14, 1973).

The Board found that although NSSD had not kept pace with the earlier Orders with regard to Waukegan, it was apparently trying to do so. In addition, the Board noted that the original grant of 13,333 PE had contemplated a prolonged construction and hook-up period for new housing under the Variance.

Then in PCB 73-502, 11 PCB 337 (Feb. 21, 1974), the Board granted an additional one year period for NSSD to use the 13,333 allotted PE. Expansion of the Waukegan STP was by then apparently in progress, and the Board found on the record there that NSSD would probably be able to meet applicable discharge limitations upon completion of the additional facilities.

Again in 1975, in PCB 74-344, 15 PCB 197 (Jan. 9, 1975), the Board continued the Variance, but cut the remaining PE connection allowance from 8,653 PE (left out of the original 13,333 PE) to 2,000 PE. The Board based its cut on the fact that Waukegan's continuing discharge to Lake Michigan was in violation of both the applicable Board Regulations and the prior Orders, supra. The Board also stated that, "[i]n wet weather, the Waukegan plant may already now be exceeding its design capacity." 15 PCB at 198.

Hydraulic loading and capacity (along with effluent quality) were again central issues in the most recent Variance covering the Waukegan STP and our sewer ban in League of Women Voters. In that case, PCB 75-301, 19 PCB 589 (Jan. 8, 1976), NSSD requested a lifting of the general sewer ban as it applied to Waukegan or, alternatively, an additional authorization of 5,000 PE for connections tributary to that plant. The Board, however, found that the record did not contain sufficient evidence to indicate that the sewer ban could be lifted, and instead granted 1,500 PE for the period ending December 31, 1976.

Finally, in this case, NSSD has incorporated the records of all of the above cases, and has asked alternatively for the following various forms of relief:

1. Variance extension allowing connections amounting to 790 PE, (remaining out of the 1,500 PE granted in PCB 75-301);
2. Variance extension allowing a "a greater number of connections;" or,
3. Removal of all restrictions on connections to the Waukegan plant.

As the basis for such relief, NSSD alleges that expansion of the Waukegan plant will finally be completed in June of 1977. By that time, NSSD claims, the plant effluent should have been diverted from Lake Michigan to the Des Plaines River, and that effluent should meet Board standards.

The Agency's Recommendation is that our Order in PCB 75-301 be extended for one year (to allow the remaining 790 PE in connections), and that the sewer ban be lifted with regard to Waukegan on June 30, 1977 or upon the completion of diversion and upgrading at Waukegan.

We had hoped that this would be our last examination of the sewer ban insofar as it bears on the Waukegan STP; that is unfortunately not the case. We are left in the same position as in PCB 75-301: There is simply not sufficient information available to justify lifting the ban. First, we have not been shown that the conditions which led to the sewer ban have been abated. As far as the record now shows, Waukegan is still discharging to Lake Michigan an effluent which exceeds allowable standards. (See, e.g., NSSD Report under PCB 75-301 of April 26, 1976, referenced at Petition, p. 2; Greeley and Hansen Report, id., of August 26, 1976.)

Second, in light of the many past delays in construction at Waukegan, we are not inclined to assume that any proposed date is firm; in PCB 75-301, completion of the plant was assumed by November, 1976.

Third, the same questions that were present in PCB 75-301 with regard to plant flows and capacity are still present. The Reports cited above, by NSSD after various problems with regard to those issues were aired at hearing, indicate that the design capacity of 19.9 MGD at Waukegan may have already been exceeded on a number of occasions.

We simply cannot lift the ban until these issues have been resolved. While we do not particularly relish the prospect of yet another round of adjudication with regard to the Waukegan STP, it seems that it will be a necessity, antecedent to any general lifting of the ban.

With regard to the Agency's contentions regarding the Judge Avenue sewer, we feel that the condition on all of the prior Variances, prohibiting connection to overloaded sewers, will be sufficient. If the Agency is satisfied that the other sewers tributary to the Waukegan STP are adequate for additional loads, our Order in PCB 71-343 of January 31, 1972, as subsequently extended and modified, will permit use of the allowed additional PE for connections to such sewers. See also, 3 PCB at 552.

In PCB 75-301, the Board estimated that NSSD would require approximately 1,500 PE in connection allowances during 1976; 710 PE were used. We shall allow a total 1,500 PE for the coming year, providing for the apparently unfulfilled needs shown last year (including conversion of some areas from septic fields to NSSD service), and some additional growth.

As was the case last year, we shall retain jurisdiction in this case to consider raising that limit, or possibly lifting the sewer ban entirely as it affects areas tributary to the Waukegan STP. To provide for those possibilities, NSSD shall by July 1, 1977, submit a report detailing the status of the Waukegan STP. We shall Order a further Recommendation by the Agency in response to NSSD's Report. A hearing will be ordered at that time, hopefully for final disposition of this matter.

All applicable conditions from PCB 71-343, PCB 72-451, PCB 73-502, PCB 74-344 and PCB 75-301 shall remain in effect.

ORDER

IT IS THE ORDER OF THE POLLUTION CONTROL BOARD that:

1. Petitioner North Shore Sanitary District be granted a Variance for its Waukegan Sewage Treatment Plant from Order No. 7 in League of Women Voters v. NSSD, PCB 70-7,-12,-13,-14 (Mar. 31, 1971), to allow sewer connections totaling 1,500 PE during the period from December 31, 1976 to December 31, 1977.

2. Said Variance grant shall be subject to all applicable conditions in PCB 71-343, PCB 72-451, PCB 73-502, PCB 74-344, and PCB 75-301.

3. Said Variance grant shall be conditioned upon the submittal by Petitioner of a report detailing all appropriate information on the status of expansion, construction, and diversion at the Waukegan Sewage Treatment Plant, including the load status of sewers tributary to said plant, such report to be filed with the Board and the Environmental Protection Agency by June 30, 1977.

4. Respondent Environmental Protection Agency shall file a response and further Recommendation in this matter, based on its own investigations and the reports submitted to them as required in paragraph 3, above, by July 31, 1977.

5. The Board shall retain jurisdiction in this matter for the term of the Variance.

6. Said Variance grant shall further be conditioned upon the submittal to the Environmental Protection Agency, within thirty-five (35) days of the date of this Order, of a Certificate of Acceptance in the following form:

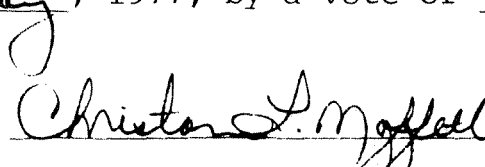
I, (We), _____ having read the Order of the Illinois Pollution Control Board in case No. PCB 76-285, understand and accept said Order, realizing that such acceptance renders all terms and conditions thereto binding and enforceable.

SIGNED

TITLE

DATE

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 3RD day of February, 1977, by a vote of 5-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board