

ILLINOIS POLLUTION CONTROL BOARD  
May 15, 1980

DERBY MEADOWS UTILITY COMPANY, )  
 )  
 ) Petitioner, )  
 )  
 ) v. ) PCB 80-43  
 )  
 ) ILLINOIS ENVIRONMENTAL PROTECTION )  
 ) AGENCY, )  
 )  
 ) Respondent. )

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

Petitioner has requested an extension of its variance granted in PCB 77-153 from Chapter 3 of the Board's Water Pollution Rules including Rules 404(f) as it relates to five-day biochemical oxygen demand (BOD<sub>5</sub>) and suspended solids, 203(d) as it applies to dissolved oxygen, 902(i)(1) as it applies to NPDES Permit renewal prerequisites and 910(a)(4) and 910(b) as they apply to terms and conditions of NPDES permits. The Agency has recommended that a variance be granted subject to conditions. Hearing was waived.

Petitioner is a privately owned utility company, located in Will County, operating a 0.6 MGD wastewater treatment plant serving approximately 1,000 customers. Presently, its treatment plant employs the activated sludge process with tertiary filtration. Two-stage aeration and denitrification tanks, as well as an aerobic digester, sludge drying beds, a tertiary sand filter and a post aeration basin are utilized prior to discharge in Long Run Creek.

In PCB 77-153, Petitioner had been granted a variance from Rule 404(f) permitting a discharge of 10 mg/l BOD<sub>5</sub> and 12 mg/l suspended solids. That variance expired September 15, 1979, with limits of 4 mg/l BOD<sub>5</sub> and 5 mg/l suspended solids now being required by Petitioner's NPDES Permit No. IL0045993.

Petitioner relies on Village of Bloomingdale v. EPA PCB 78-124, 31 PCB 125, October 19, 1978 in seeking its variance extension contending that had Petitioner not had an existing variance under PCB 77-153, it would have been joined as a party. Petitioner has indicated that it is able to meet the 10 mg/l BOD<sub>5</sub> and 12 mg/l suspended solids limitations which were applied to the majority of dischargers in Bloomingdale. Petitioner also states that the discharge from this system will have no negative impact upon the receiving streams. Also to be noted is the Agency's proposed amendment to Rule 404(f) of Chapter 3, Docket C, R77-12, to eliminate the 4 mg/l BOD<sub>5</sub> and 5 mg/l suspended solids limitation in favor of a 10 mg/l and 12 mg/l standard. Board action is pending.

Without the variance extension, it is claimed that the Petitioner will suffer substantial hardship by subjecting it to penalties for failure to comply with an unusually strict standard. These penalties would be imposed despite Petitioner's excellent performance in the past as shown by its discharge monitoring reports and the installation of a new treatment facility at a cost of \$1.5 million. Plant and service area expansion would be halted since plant permits could not be issued by the Agency as long as Petitioner is subject to the 4/5 standard.

The Board concludes that denial of a variance would constitute arbitrary and unreasonable hardship. The relief sought by Petitioner is essentially the same as the relief granted by the Board in Bloomingtondale. The reasoning in that case must be employed in this matter to avoid inequitable results. Relief will be granted from Rules 203(d), 402, and from Rules 902(i)(1), 910(a)(4) and 910(b) so that the Agency may issue a NPDES permit to Petitioner. Rather than grant relief for five years as Petitioner has requested, the Board will limit the variance to the same terms as Bloomingtondale for consistency.

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

#### ORDER

- 1) Derby Meadows Utility Company is hereby granted an extension of its previous variance from Rules 203(d) and 402 (as it pertains to dissolved oxygen), 902(i)(1), 910(a)(4) and 910(b) of Chapter 3: Water Pollution, until October 19, 1983.
- 2) Petitioner is hereby granted an extension of its previous variance from Rule 404(f) of Chapter 3: Water Pollution until October 19, 1983 or until the Board takes final action in R77-12, Docket C, whichever occurs first.
- 3) During the period of this variance the discharge of treated sewage from Petitioner's facilities shall be limited to 10 mg/l BOD<sub>5</sub> and 12 mg/l suspended solids as 30-day averages.
- 4) The Agency is hereby authorized to issue an NPDES permit to Petitioner in a manner consistent with the terms of this Order.
- 5) Within 45 days of the date of this Order, Petitioner shall execute a Certification of Acceptance and

agreement to be bound by all the terms and conditions of this variance. The Certification shall be forwarded to the Illinois Environmental Protection Agency, Division of Water Pollution Control, Variance Section, 2200 Churchill Road, Springfield, Illinois 62706. This 45 day period shall be held in abeyance if this matter is appealed. The form of the Certification shall read as follows:

CERTIFICATION

I, (We), \_\_\_\_\_, having read and fully understanding the Order in PCB 80-43 hereby accept that Order and agree to be bound by all of its terms and conditions.

SIGNED \_\_\_\_\_  
TITLE \_\_\_\_\_  
DATE \_\_\_\_\_

IT IS SO ORDERED.

I, Christian L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 15<sup>th</sup> day of May, 1980, by a vote of 5-0.

Christian L. Moffett  
Christian L. Moffett, Clerk  
Illinois Pollution Control Board