

ILLINOIS POLLUTION CONTROL BOARD
September 15, 1976

DANVILLE SANITARY DISTRICT,)
)
) Petitioner,)
)
) v.) PCB 76-180
)
) ENVIRONMENTAL PROTECTION AGENCY,)
)
) Respondent.)

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

This matter is before the Board on a Petition for Variance filed June 22, 1976 by Petitioner Danville Sanitary District (Danville), seeking extension of a previously granted Variance from the limitations of Rules 404(b), 404(c), 404(f), 602(d)(1) and part of 1002, of Chapter 3: Water Pollution, of this Board's Rules and Regulations. PCB Regs., Ch. 3, Rule 404(b), 404(c), 404(f), 602(d)(1), 1002 (1976). A Recommendation was filed by the Environmental Protection Agency (Agency) on August 3, 1976. No hearing was held in this matter.

BACKGROUND

Danville operates an activated sludge sewage treatment plant which treats the wastewaters of the City of Danville and certain industries located within that city. Danville's operations have been discussed by the Board in previous Opinions and do not require detailed explanation here. A brief discussion of Danville's prior appearances before the Board will suffice.

Danville has been before this Board continuously for the past five and one-half years, having first appeared as a Respondent in an enforcement matter filed by the Agency on February 26, 1971. In that case the Board found Danville's then existing facilities inadequate, acknowledged a possible need for new facilities and, as part of the relief granted, imposed a "sewer ban" on the area served by Danville. EPA v. Danville Sanitary District, PCB 71-28, 1 PCB 619 (May 26, 1971); see also, id., 1 PCB 627 (Mr. Aldrich, dissenting). The Board retained jurisdiction in that case for an extended period of time, issuing two supplemental Opinions and Orders and an additional Opinion and Order on request for additional connections. Id., PCB 71-28, 2 PCB 107 (July 12, 1971); id., PCB 71-28, 2 PCB 275 (Aug. 13, 1971); id., PCB 71-28, 3 PCB 271 (Dec. 21, 1971).

In a Variance matter filed the following year by Danville, the Board found Danville's progress sufficient to release it from the sewer ban order of PCB 71-28. Danville Sanitary District v. EPA, PCB 72-161, 4 PCB 673 (June 14, 1972).

During the following period, Danville filed two additional Variance Petitions, asking relief from the requirement of Rule 404(f) of Chapter 3 that advanced sewage treatment facilities be completed (as that rule then required) by December 31, 1973. Danville Sanitary District v. EPA, PCB 72-347, 5 PCB 313 (Aug. 29, 1972); Danville Sanitary District v. EPA, PCB 72-400, 5 PCB 721 (Oct. 17, 1972). Both of those Variance cases were dismissed by the Board on findings that the Petitions were inadequate.

On February 23, 1973 Danville filed another Variance Petition, this time seeking relief from Rules 404(c), 404(f) and 602(d)(3) of Chapter 3. Relief at that time was sought until August 1, 1976, contemplating that additional treatment facilities would be completed by that time. (The Agency's Recommendation discussed the need for relief from Rules 602(d)(1), 921(d) and 1002.) On the facts presented to it in that case, and partially as a result of the Board's enactment of Rule 409 of Chapter 3 on July 19, 1973, the Board found Danville's Petition to be moot in part and premature in part, and dismissed the case. Danville Sanitary District v. EPA, PCB 73-77, 8 PCB 671 (July 31, 1973), rehearing denied, 9 PCB 531 (Oct. 18, 1973) Cf., In the Matter of Water Pollution Regulation Amendments, R73-3, -4, 8 PCB 591 (July 19, 1971), amended, In the Matter of Proposed Amendments to Rule 409 of the Water Pollution Regulations, R74-17, 18 PCB 156 (July 17, 1975).

Danville's next Variance Petition was filed on January 7, 1974. The Board in that case found that Danville had, "begun a program to design and construct an advanced waste treatment system which will meet the effluent requirements of Rule 404(f), as well as other applicable standards...[and the] total of the District compliance program is \$19,505,368. ...The District will have approximately \$15 million in federal-state grants to cover capital costs if the District can raise the approximate \$5 million share." (Record citation omitted.) Danville Sanitary District v. EPA, PCB 74-12, 12 PCB 21, 22 (April 4, 1974).

The Board also accepted testimony in PCB 74-12 to the effect that Danville's effluent would not have an adverse effect on water quality in the Vermillion River, and that Danville's discharges would not aesthetically impair that river. The Board found that Danville had taken adequate steps to eliminate past problems in the existing sewage treatment plant, in an attempt to maximize the quality of Danville's discharges pending completion of its advanced waste treatment system. Id.

Although some requested relief was refused (notably, an "order to abate" concerned with bonding limitations), the Board in PCB 74-12 did grant Variances with respect to the following rules:

Rule 404(b), limiting effluent from any source whose untreated waste load is 10,000 population equivalents (PE) or more (which includes Danville) to a maximum of 20 mg/l of BOD₅ and 25 mg/l of suspended solids.

Rule 404(c), limiting effluents whose dilution ratio is less than 5 to 1 (again including Danville's effluent), to 10 mg/l of BOD₅ and 12 mg/l of suspended solids, after Dec. 31, 1973. The date of Dec. 31, 1973 was extended to Dec. 31, 1974 by Rule 409, enacted in R73-3, -4, supra.; that date was further extended for certain grant eligible dischargers until July 1, 1977, in an amendment to Rule 409 enacted on July 17, 1975, in R74-17, supra.

Rule 404(f), which limits to 4 mg/l of BOD₅ and 5 mg/l of suspended solids any effluent whose dilution ratio is less than 1 to 1. (The application of Rule 404(f) to Danville was found premature in PCB 73-77, supra., but proper in PCB 74-12. 8 PCB at 671; 12 PCB at 22.)

Rule 602(d)(1), which requires compliance with the performance criteria for treatment plant bypasses by the dates for compliance with Rules 404 - 408 (as modified in Rule 409).

Rule 1002, as it requires the filing of a project completion schedule indicating compliance with applicable treatment deadlines.

The Variance grant in PCB 74-12 was subject to several conditions, chief among which was a requirement that Danville initiate construction of its new facilities by March, 1975, and complete construction of those facilities by April, 1977.

Before submitting the instant Variance Petition, on April 1, 1975 Danville submitted another Petition. Danville Sanitary District v. EPA, PCB 75-139. On April 10, 1975 the Board entered an Interim Order requesting additional information regarding the extension of Danville's construction schedule through August, 1978. 16 PCB 411. On June 6, 1975, the Board dismissed PCB 75-139, for failure to supply the required explanation of the extended compliance schedule. 17 PCB 287.

THE VARIANCE PETITION

The Petition in the instant case asks that the Variance granted in PCB 74-12, which expired on April 1, 1975, be extended through January, 1979. Danville states that, "documentation referenced in the Board Order of June 6, 1975 could not have been supplied to the Board prior to that date. ...the revised construction schedule set forth in that Petition was a projection of anticipated and actual delays in government approval..." (Emphasis in original) (Pet. 8). "Since the Board's Order of June 6, 1975, ... documentation contemplated by the Order of April 10, 1975, has recently become available." (Id., 9.)

Although the Agency does not address the issue, neither does it contest Danville's claim that much of the delay in the initiation and completion of construction of its advanced waste treatment facilities has been the result of governmental delays in grant approval, and design modification made necessary by governmental grant approval and regulatory processes. (Pet., 9-11). Step II grant approval, which was estimated in PCB 75-139 as likely to be completed on March 1, 1975, actually occurred on May 14, 1975. The Step III grant award, which had been projected for August 15, 1975, occurred on June 30, 1975; an amendment to that grant award (Pet. Ex. H), was not approved until December 24, 1975. As a result of these delays, and apparently because of a million dollar error by the original low bidder on Danville's project, the award of the contract and initiation of construction, projected for August 18, 1975, did not occur until January 5, 1976. As a result, construction will not be complete until January 5, 1979.

Danville bases its request for relief in this case on:

1. A claim that the above delays were beyond its control, and unavoidable;
2. Its claim that it has proceeded in good faith to implement the construction of the required facilities as expeditiously as possible;
3. Its further claim that it has complied with the conditions of the previous Variance, PCB 74-12;
4. Its allegation that the same factors which led to the grant of the Variance in that case are present here.

A review of the material submitted in this case, and of the previous litigation detailed above, indicates that Danville has acted in good faith over a long period in a continuous effort to abate the problem which it admitted to as early as the original enforcement case, PCB 71-28. See, e.g., 2 PCB 107; 2 PCB at 275; 4 PCB at 674; 8 PCB at 672.

When granting the Variance in PCB 74-12, the Board stated that, "Because of the District's past actions involving water pollution problems and the reasonableness of its project completion schedule, the Board grants the District a Variance." 12 PCB at 22. For those same reasons, and because we find that the delays in initiation and completion of the necessary construction have been beyond Danville's control, we shall again grant a Variance.

Except for the change in completion date, the conditions on this Variance grant shall be essentially the same as those imposed in PCB 74-12. We note that the Agency has requested, in recommending a grant of this Variance, that the Board require Danville to take, "what steps necessary to have its NPDES permit appropriately modified..." (Rec., 7). We do not find that recommended condition appropriate.

Finally, we note that because of the Board's action in R74-17, supra, amending Rule 409, portions of the requested relief will not be needed until July 1, 1977. Until that date, Danville's BOD₅ and suspended solid discharges are regulated only by Rule 404(b), as a result of its grant-eligible status. After July 1, 1977, pursuant to the Board's determination in PCB 74-12, Danville will also be limited by Rules 404(c) and 404(f).

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

ORDER

IT IS THE ORDER OF THE POLLUTION CONTROL BOARD that:

1. Petitioner Danville Sanitary District is hereby granted a Variance from:

- (a) Rules 404(b), 602(d)(1) and that applicable of 1002 concerning compliance deadlines of Chapter 3: Water Pollution, from April 1, 1975 until January 31, 1979,
- (b) Rules 404(c) and 404(f) of Chapter 3: Water Pollution, from July 1, 1977 until January 31, 1979,

subject to the conditions of PCB 74-12, except insofar as the dates therein are hereby modified.

2. Petitioner shall, within thirty (30) days of the date of this Order, execute and forward to the Environmental Protection Agency, Control Program Coordinator, 2200 Churchill Road, Springfield, Illinois 62706, a Certificate of Acceptance in the following form:

I, (We), _____ having read the Order of the Illinois Pollution Control Board in case No. PCB 76-180, 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 15th day of September 1976, by a vote of 5-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board