

ILLINOIS POLLUTION CONTROL BOARD
September 2, 1976

SPINNEY RUN FARMS CORPORATION,)
)
 Petitioner,)
)
)
 v.) PCB 76-90
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)
)
 ENVIRONMENTAL PROTECTION AGENCY,)
)
 Respondent.)

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

This matter comes before the Board upon Spinney Run Farms Corporation's (Spinney Run) April 1, 1976 Petition for Variance and the May 24, 1976 amendments thereto. The Illinois Environmental Protection Agency (Agency) filed its Recommendation on July 16, 1976. No hearing has been held in this matter, and there have been no public comments.

Spinney Run requests variance from Section 12(a) of the Environmental Protection Act (Act) and Rules 203(a), 403 and 404(f) of Chapter 3: Illinois Water Pollution Regulations (Regulations) for its dairy processing and milk bottling plant located at Illinois Route 21, approximately one-half mile north of Illinois Route 120. This petition is the latest in a long line of variance and enforcement actions concerning Spinney Run which have come before the Board. On April 10, 1975, variance for this installation was granted in PCB 74-347 for a period of one year ending September 22, 1975. In a subsequent Opinion in that matter, dated May 8, 1975, the Board stated:

As Petitioner failed to proceed with its pre-treatment plant as originally proposed in the

earlier case, we are hesitant to grant variance for the full length of time requested. Should Spinney Run be able to show sufficient progress in constructing a facility an extension of the variance upon proper application would be appropriate.

Spinney Run subsequently moved for a reconsideration of the Order noting that the length of the variance would be insufficient to allow construction of the abatement facilities and questioning the interim limits set by the Board in the Order. On May 22, 1975, the Board dismissed Spinney Run's Motion For Reconsideration and reaffirmed its Order of April 10, 1975.

Spinney Run subsequently filed a Petition for Review of the Order entered by the Board on April 10, 1975, which review is pending in the Illinois Appellate Court, Second District. On October 30, 1975, the Board denied a Joint Motion for Reconsideration upon remand from the Appellate Court, indicating that the revised compliance program and different interim limits which were proposed were not supported by testimony or evidence. The present petition for variance submits for the Board's evaluation the compliance program originally set forth in the joint motion.

The ultimate solution to elimination of Spinney Run's effluent as a pollution source is diversion of its effluent to the North Shore Sanitary Treatment Plant under construction in Gurnee, Illinois via the proposed Lake County Northeast Central Interceptor Sewer. The Gurnee plant is expected to complete and have operational the tertiary phase of its plant by the end of 1976. The Northeast Central Interceptor Sewer, however, will not be operational until the Fall of 1977. Spinney Run's compliance program includes the construction of a pretreatment system with the eventual discharge to the North Shore Sanitary District. The Agency has issued a permit to Spinney Run to construct its pretreatment system with a special condition requiring Spinney Run to obtain a variance for its effluent discharge until such time as the North Shore Sanitary District is prepared to accept Spinney Run's effluent. It is the contention of Spinney Run that the pretreatment facility will be completed by December 31, 1976. We, therefore, have the following

expected compliance program for Spinney Run:

	<u>Treatment Method</u>	<u>BOD and SS (mg/l)</u>
Present - 12/31/76	Continue present operations	300/150
1/1/77 - 12/31/77	Pretreatment plant operational	100/70
1/1/78 -	Diversion to NSSD	zero discharge

The Agency in its Recommendation strongly endorses the goal of regional wastewater treatment in Lake County. The Board agrees with this goal and, in addition, feels that the final result of zero discharge of Spinney Run's effluent should be encouraged. Spinney Run has shown good faith under its previous variance and will have completed the pretreatment facility in roughly the period of time estimated by it in the previous variance proceedings. Although it might be argued that Spinney Run's previous reluctance to come into compliance with the Board's Regulations is largely responsible for the present hardship alleged by the Petitioner, those prior attitudes were the subject of enforcement proceedings passed upon by the Board in previous actions. Since the grant of the last variance in PCB 74-347, Spinney Run has shown good faith in its attempts to abate pollution problems, and the Board finds that variance as indicated in PCB 74-374 (supra) is appropriate.

The Board's decision to grant variance in this case is based in substantial part upon the evidence presented in Spinney Run Farms' May 24, 1976 verified amendment and the exhibits attached thereto. From this evidence, it appears that Spinney Run's effluent has a negligible effect upon the Des Plaines River providing it is treated effectively with the existing equipment. We shall, therefore, condition the variance upon sealing of the raw bypass structure and assurance that all flows receive a minimum of chlorination and that adequate removal of accumulations of solids that settle in the chlorine contact tank is accomplished.

The Agency recommends that a 30 day average BOD and suspended solids concentration of 300 and 150 mg/l respectively be established until December 31, 1976, these levels representing what can be reasonably achieved under the present conditions. Subsequent to the operational status of the pretreatment plant on January 1, 1977 until diversion of all wastewater flows to the North Shore Sanitary District, the Agency recommends a 30 day average BOD and suspended

solid concentration limitation of 100 and 70 mg/l respectively. The Board accepts these proposed limitations and will incorporate them in the grant of variance. Since the completion of the Interceptor Sewer is expected to be late in 1977, the Board will grant the variance herein until December 31, 1977.

The August 5, 1976 response of Spinney Run to the Agency's recommendation indicates that the parties entered into an agreement concerning Spinney Run's appeal of PCB 74-13 and PCB 74-347. The Board has not considered this agreement in reaching its decision. However, having decided to grant the variance, the Board will accept Spinney Run's offer to voluntarily dismiss said appeal.

This Opinion constitutes the finding of fact and conclusions of law of the Board in this matter.

ORDER

It is the Order of the Pollution Control Board that:

1. Spinney Run Farms Corporation be granted variance from Rules 203(a), 403, and 404(f) of Chapter 3: Water Pollution Regulations from September 23, 1975 until December 31, 1977 subject to the following conditions. Spinney Run Farms Corporation shall:

- (a) Continue construction of the pretreatment facility previously approved by the Agency;
- (b) Submit monthly reports to the Agency indicating contaminant levels and indicating the progressive construction;
- (c) Limit the 30 day average BOD and suspended solids concentration to 300 and 150 mg/l respectively until December 31, 1976;
- (d) Limit the 30 day average BOD and suspended solids concentration to 100 and 70 mg/l respectively from January, 1977 until diversion of all wastewater flows to the North Shore Sanitary District, or until December 31, 1977 whichever occurs first;

- (e) Effectively seal the raw bypass structure and insure that all flows receive a minimum of chlorination and provide for adequate removal of accumulation of solids that settle in the chlorine contact tank.

2. Spinney Run Farms Corporation shall execute their offer to voluntarily dismiss the pending appeal of PCB 74-213 and PCB 74-347 within 21 days of this Order, such execution including but not limited to the following:

- (a) Payment of the penalty in PCB 74-213 in the amount of \$8,000.00 to the Illinois Environmental Protection Agency, Fiscal Services Section, 2200 Churchill Road, Springfield, Illinois 62706;
- (b) Posting of a performance bond of \$100,000.00 in a form acceptable to the Agency to assure full and timely completion of the compliance program;
- (c) Executing and forwarding to the Illinois Environmental Protection Agency, Division of Water Pollution Control, 2200 Churchill Road, Springfield, Illinois 62706 a certificate of acceptance in the following form:

CERTIFICATION

I. (We), _____ having read and fully understanding the Order of the Illinois Pollution Control Board in PCB 76-90 hereby accept said Order and agree to be bound by all of the terms and conditions thereof.

SIGNED _____

TITLE _____

DATE _____

Mr. Young abstained.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 21 day of September, 1976 by a vote of 4-0.

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