

ILLINOIS POLLUTION CONTROL BOARD  
July 25, 1972

CITY OF CANTON )  
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 )  
 v. ) #72-36  
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 ENVIRONMENTAL PROTECTION AGENCY )

Opinion & Order of the Board on Petition for Modification  
(by Mr. Currie):

On January 31, 1972, Canton filed a petition seeking extension of the then deadline of July, 1972 for providing advanced sewage treatment facilities. Although our revised regulations of March 7, 1972 (#R 71-14) generally extended the date to a point beyond that at which Canton advised it would be in compliance, the Agency's recommendation was that we grant the petition subject to certain conditions, and we did so. City of Canton v. EPA, #72-36 (April 25, 1972).

Canton now asks that we modify those conditions, alleging that it never received a copy of the Agency's recommendation, as our rules require, and arguing that it is discriminatory to require it alone to post a bond to meet the new regulation applicable to everyone; that the order is subject to a discriminatory interpretation requiring it to complete the facilities in advance of the date applicable to others under the new regulation; and that there is no way it can comply with the condition requiring it to cease all bypassing of raw sewage immediately, as that is one element of the project under construction. The Agency's response is generally sympathetic and does not deny that the initial recommendation was not received by Canton.

In agreement with judicial practice and with the sound policy that what is once decided should stay decided, we do not upset our final decisions in the absence of unusual circumstances. Without such a policy nothing would ever be settled. But we think the requirement of unusual circumstances is met here by the fact that the City apparently never had an opportunity to respond to the Agency's original recommendation on which our decision was based. The absence of notice invalidates our prior order, and we are free to reconsider the matter.

It seems clear from today's perspective that the original decision was in error. It was sharply at variance with other decisions made at the same time on the same subject, which held that the request for more time to meet a regulation had become moot because the regulation had been revised to allow the time requested. E.g., City of Elmhurst v. EPA, #71-389 (March 14, 1972). In the present case the Agency's recommendation was for a grant on conditions rather than for a dismissal as moot, and we assumed this was because some aspect of the plant's operation unaffected by the extension of time for advanced treatment might still require a variance. But the danger of pursuing such a speculative course has been made apparent by the City's subsequent petition for modification, which demonstrated that it is not clear what variance was granted from what provisions and that the original order on its face appears discriminatory in that Canton is singled out for special requirements to meet the generally applicable standard. We think the better course would have been, as in the Elmhurst case, to have dismissed the initial variance request as mooted by the adoption of the new regulation, leaving it to the City to file a new petition specifically indicating the nature of the relief, if any, sought from the revised regulations. From what is before us now we do not see that Canton is asking any relief from the revised regulations. It is on schedule as to the advanced facilities, and it does not contest the provision of the first order requiring disinfection according to the regulation schedule. If the City does request relief, it can let us know hereafter with specific reference to the new regulations.

The order of April 25, 1972 in this case is hereby vacated and the petition for variance dismissed as moot.

I, Christan Moffett, Clerk of the Pollution Control Board, certify that the Board adopted the above Opinion & Order on Petition for Modification this 25<sup>th</sup> day of July, 1972, by a vote of 4-0.

Christan Moffett