

ILLINOIS POLLUTION CONTROL BOARD  
May 16, 1974

VILLAGE OF LENA )  
PETITIONER )  
 )  
 )  
v. ) PCB 74-67  
 )  
 )  
ENVIRONMENTAL PROTECTION AGENCY )  
RESPONDENT )  
 )

ORDER OF THE BOARD (by Mr. Marder)

This case comes to the Board on Petition of the Village of Lena, filed February 15, 1974, for variance from 30 mg/l BOD<sub>5</sub> interim limitation as listed on its proposed National Pollution Discharge Elimination System (hereinafter referred to as NPDES) permit, which has been promulgated by the U.S. Environmental Protection Agency, until March 31, 1975.

On February 21, 1974, the Board ordered Petitioner to file an amended Petition for the following reasons, or suffer a dismissal:

- 1) The Petition does not give the dilution ratio of the tributary into which the plant discharges;
- 2) The Petition makes no mention of a determination by the Agency as to whether a 4/5 or 10/12 BOD<sub>5</sub> /suspended solids standard applies;
- 3) No effects of the existing discharge upon the tributary or the environment are detailed in any way.

The Agency filed its recommendation on April 18, 1974. The Agency recommended that variance from the proposed NPDES permit be denied, as well as recommending denial of a variance from Rule 404 (a) of Chapter 3 of the Board's Rules and Regulations, and a grant of a variance from Rule 404 (f) of Chapter 3 from December 31, 1974, until March 31, 1975, subject to certain conditions.

No hearing was held.

The Board finds the amended Petition in this matter inadequate as it does not state a request for relief that the Board can grant. The Petition requests variance from limits in a proposed NPDES permit. The Board cannot do this. First, the proposed permit is not a legally enforceable permit to which the Village of Lena is bound. Secondly, even were this a final permit, the Illinois Pollution Control Board

has no jurisdiction to allow variance from a federal permit.

The Agency assumed Petitioner is asking for variance from certain regulations of the Board. Though this is possible, the Board's Procedural Rule 401 requires that a petition for variance contain a clear statement of the relief sought.

It is the Board's Opinion that the amended Petition does not meet the requirements detailed above. To ask for yet another amendment would serve no useful purpose. The wiser course of action would be to deny the Petition without prejudice. Should Petitioner wish to refile for variance, it should comply with the Board's Procedural Rule 401 as closely as possible.

IT IS THE ORDER of the Pollution Control Board that Petition of the Village of Lena is denied without prejudice.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, certify that the above Order was adopted by the Board on the 16<sup>th</sup> day of May, 1974, by a vote of 5 to 0.

Christan L. Moffett