

ILLINOIS POLLUTION CONTROL BOARD
May 23, 1972

METROPOLITAN SANITARY DISTRICT)
OF GREATER CHICAGO)
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v.) #72-110
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ENVIRONMENTAL PROTECTION AGENCY)

Opinion of the Board (by Mr. Currie):

The District first filed a petition seeking extension until 1974 of the then applicable date of July, 1972 for meeting effluent standards for biochemical oxygen demand of 4 mg/l and for suspended solids of 5 mg/l. The basis for the request was that the East Chicago Heights sewage treatment plant, which provides secondary treatment by a trickling filter and has a capacity of about 3 million gallons per day, was to be phased out by 1974 and that with interim improvements it would operate satisfactorily enough to make it unreasonable to spend the substantial sums required to meet the standard for the short remaining life of the plant. A similar request we granted in a case involving the same petitioner's Orland Park treatment plant, #71-166 (Sept. 16, 1971). However, the adoption of our revised regulations intervened, mooting the request by postponing the date for the strict effluent standard, and the petition was dismissed (#72-24, April 4, 1972). A new petition was thereupon filed, asking extension until March, 1973 of the new July, 1972 standards of 20 and 25 mg/l for BOD and suspended solids respectively. PCB Regs, Ch. 3, Rule 404(b). We grant the request until November 23, 1972, for reasons given below.

MSD alleges that its effluent now averages BOD 25, suspended solids 23; the Agency's analysis of MSD's operating reports indicates 49 and 29. In any case, to improve this performance (to an estimated 8 and 12 mg/l respectively, exclusive of algae) and to provide additional capacity for expanded influent sources, MSD plans to add ferric chloride and polyelectrolytes to improve settling and to construct an aerated lagoon. Experience with these chemical additions at the District's Orland Park plant is said to have increased overall suspended solids and BOD reductions from about 70 to about 90%.

Construction permits for these and further improvements were issued March 6, 1972, and the District stated that completion would take five months from the issuance of the permit. The Agency recommends an extra month of grace, and thus a compliance date of September 6, 1972. MSD's March 1973 request was based on the assumptions that the Board would act in the petition by the end of June, that 90 more days would pass before a permit issued, and that construction could not start till then.

The discrepancy between EPA's and MSD's assessments of the required time seems to turn on an interpretation of the permits issued in March. EPA says MSD should have gone ahead at once with construction. MSD says the permits contemplated construction of the presently planned facilities only in conjunction with tertiary filters that both parties now agree need not be built because of the changed standards. While we have made clear before that a discharger may not sit idly waiting for a variance decision before starting to work on facilities that are required whether or not the variance is granted (Richardson Co. v. EPA, #72-41 (May 3, 1972); A. E. Staley Co. v. EPA, #71-174 (Sept. 30, 1971)), here MSD seems to have believed it could not proceed without a further permit that would not be granted without a variance. The doubt has now been removed by EPA's recommendation, which unequivocally and officially states that MSD has a permit for the interim facilities and may construct them without further ado. We think the most expeditious way to improve the present discharge is to construe the recommendation as a declaration that no further permit is needed, and to give MSD the six months it needs for bids and construction starting from the date of this order, all obstacles to construction having been removed.

Until March of this year, MSD was confronted with regulations requiring full tertiary treatment at a plant that was to be phased out in the near future, and occupied itself in devising a program to avoid unnecessary expense while providing interim improvements. The significance of the July, 1972 date for meeting a 20-25 standard became clear only upon the adoption of the new regulations. We believe the District applied itself in good faith and with diligence to the solution of the problem confronting it before March, and that it is entitled to a few additional months to do what the new rules require.

We also note that the District states its intention to seek a brief variance from the presently applicable December, 1973 date for full tertiary treatment on the ground the plant will be abandoned in May, 1974. We construed the petition to make such a request now; the Agency says it is not prepared to respond on that issue and that no such request has yet been made. We do not see why this issue should be postponed, since the facts

are clear and the decision obvious. To spend hundreds of thousands of dollars in order to bring the plant into compliance for five months would be a waste of money, given the quality of effluent it will produce on the basis of the interim improvements alone. The District's whole plan is before us, including the construction of an interceptor to take away the wastes now reaching the plant. As we said before, we construe the petition as incorporating the earlier request (see #72-24) for a May, 1974 date to meet BOD 4, solids 5, and that request is granted subject to annual renewal, as required by the statute, based on a showing of satisfactory progress toward phasing out the plant. Cf. MSD v. EPA, #71-166 (Sept. 16, 1971) (Orland Park).

ORDER

A. The Metropolitan Sanitary District (MSD) is hereby granted a variance with respect to its East Chicago Heights sewage treatment plant, from Rule 404(b) of PCB Regs., Ch. 3, until November 23, 1972, on the following conditions:

1. MSD shall so operate its existing facilities as to achieve as good an effluent as is practicable;
2. MSD shall with all expedition undertake the program of interim improvements described in its petition;
3. MSD shall within 35 days after receipt of this order post with the Agency a bond in the amount of the cost of interim improvements remaining to be made under this program; to assure their completion;
4. MSD shall within 35 days after receipt of this order file with the Agency a detailed critical path construction schedule;
5. MSD shall file monthly progress reports with the Agency, the first to be filed within 35 days after receipt of this order.

B. MSD is further granted a variance until May 23, 1973, from requirements respecting the 4 and 5 mg/l standards of PCB Regs. Ch. 3, Rule 404(f), subject to extension to May, 1974 upon application and proof of satisfactory progress, provided the following conditions are met:

1. MSD shall file a timely project completion schedule for the program of plant abandonment and shall diligently pursue that program;
2. MSD shall so operate its facilities as to achieve as good an effluent as is practicable;

3. Within 35 days after receipt of this order MSD shall post a bond in the amount of the cost of the abandonment program not yet incurred, to assure its completion;
4. MSD shall file quarterly reports with the Agency, the first to be filed within 35 days after receipt of this order.

I, Christan Moffett, Clerk of the Pollution Control Board, certify that the Board adopted the above Opinion this 23RD day of May, 1972, by a vote of 4-0.

Christan F. Moffett