

ILLINOIS POLLUTION CONTROL BOARD
August 13, 1971

CITY OF PANA)
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 v.) # PCB71-160
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 ENVIRONMENTAL PROTECTION AGENCY)

Opinion of the Board (by Mr. Currie):

The City of Pana received a letter from the Environmental Protection Agency, dated January 11, 1971, stating that because mercury seals used in trickling filter sewage treatment plants "pose a serious threat of additional mercury pollution by either leaking or rupture of the seal," the Agency was "requiring that all mercury seals in trickling filters with rotary distributors be replaced no later than June 30, 1971" (Ex. 7 & 8 to petition). On June 23 the City filed a petition for variance reciting its investigation of the problem and its determination to replace the existing mercury seal, and requesting that the deadline be extended to March 1, 1972, the earliest date on which it believed it could comply. The Agency has filed a motion to dismiss in which it says that "the City of Pana is replacing its mercury seal in its treatment plant within a reasonable period of time;" that mercury concentrations in the effluent are below the regulation limit of 0.0005 mg/l; and that the Agency direction from which variance is sought is neither a statutory requirement, a Board regulation, nor a Board order and therefore not the proper subject of a variance proceeding.

We confess to some difficulty in understanding just what the Agency's letter was. It is of course the Board and not the Agency that is empowered to adopt regulations, and the only proper statutory procedure for promulgating a rule requiring the replacement of mercury seals is through rule-making proceedings entailing public hearings before this Board. If mercury seals should be outlawed, we suggest the Agency propose a regulation to that effect so as to allow interested people to comment. The Agency cannot "require" that seals be replaced. We must therefore interpret the Agency's letter as a warning that unless the seals were replaced the Agency might institute proceedings against the City on the ground that the danger of leakage or rupture constituted a threat of water pollution in violation of the Environmental Protection Act.

The Agency is quite right that its letter is not an order from which a variance can be granted. But we view the petition in essence as a request for immunity from prosecution for the statutory violation, if it exists here, of causing a threat of water pollution. The Agency states in its motion that it approves the City's program for terminating the threat. But in our view approval of the program is grounds not for dismissing but for granting the petition. We think the City, having been pushed by the Agency into seeking relief against the threat of an enforcement action, is entitled to a decision on the merits of its program. In accordance with the statements in the Agency's motion to dismiss we conclude that the program is reasonable and that the program should be approved. Because of this agreement there is no need for a hearing, and the hearing scheduled will be cancelled.

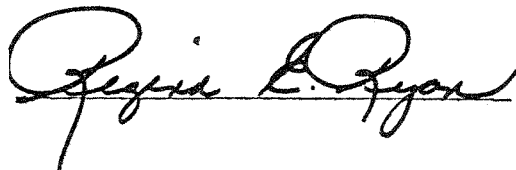
This opinion constitutes the Board's findings of fact and conclusions of law.

ORDER

The City of Pana is hereby granted a variance from the statutory prohibition against causing a threat of water pollution with respect to the maintenance of a mercury seal on its trickling filter, subject to the following conditions:

- (1) The mercury seal shall be replaced no later than March 1, 1972;
- (2) This variance shall terminate upon the occurrence of any leak or rupture of the seal.

I, Regina E. Ryan, Clerk of the Pollution Control Board, certify that the Board adopted the above Opinion this 13th day of August 1971.

A handwritten signature in cursive script that reads "Regina E. Ryan". The signature is written in black ink and is positioned below the typed name of the signatory.