

ILLINOIS POLLUTION CONTROL BOARD
September 16, 1971

THE METROPOLITAN SANITARY DISTRICT)
OF GREATER CHICAGO)
v.) PCB 71-166
ENVIRONMENTAL PROTECTION AGENCY)

Mr. Allen S. Lavin, Chief Attorney, The Metropolitan Sanitary District of Greater Chicago, by:
Mr. Paul D. Lindauer, Jr., Assistant Attorney, appeared for the petitioner;

Mr. Roger Ganobcik, appeared for the respondent;

Schrieber, Mack & Pieper, by: Mr. Raymond W. Pieper, appeared for the Village of Orland Park

Opinion of the Board (by Mr. Dumelle)

On June 26, 1971 The Metropolitan Sanitary District of Greater Chicago (MSD) petitioned the Board for a variance from the operation of certain sections of Rules and Regulations SWB-14, Water Quality Standards, Intrastate Waters (hereafter SWB-14). Specifically the MSD has sought to be relieved of complying with certain requirements in SWB-14 relating to tertiary treatment and BOD and suspended solids levels at the Orland Park Sewage Treatment Plant (Plant) inasmuch as the MSD has plans and construction is underway which will eliminate the operations of the plant in approximately two years. The MSD sought to have a variance granted starting on July 1, 1972 and extending for one year. July 1, 1972 is the date by which the MSD is required by SWB-14 to provide tertiary treatment. In short, the District asked for a one-year extension of the SWB-14 timetable for construction of tertiary treatment facilities. The District also requested that it be allowed, in the interim period, to be permitted to install additional capacity to the existing facilities to increase the present capacity by 0.6 MGD.

The Village of Orland Park appeared at the hearing in this matter held on August 6 and was allowed to intervene with all the rights of an original party (R.17). The Village introduced testimony relating to the economic impact which denial of the requested variance might have on the Village and several subdivision house builders in the area.

The regulation from which the District sought a variance in this case was enacted by the Sanitary Water Board, one of this Board's predecessors, in 1967 with the implementation plan section of the regulation being enacted in March 1968. The tertiary treatment requirement has thus been on the books for more than three years. SWB-14 is a comprehensive water pollution abatement regulation applicable to all intrastate waters in Illinois not covered by other specific stream standards. The District is not only obliged to meet the effluent criteria specified in SWB-14 by July of 1972 but it is required to meet the timetable requirements in paragraph 12 relating to the completion of plans and specifications 18 months before the completion date for tertiary facilities and award of the construction contracts 12 months before the completion date. In other words the District is under a requirement to provide tertiary treatment by July 1972 and it is under a further requirement to submit plans by February 1971 and award construction contracts by August 1971. Under the regulation the MSD has a legal duty at this time to let contracts and commence construction to meet the BOD and suspended solids effluent standards by July 1972. The instant variance was requested at the proper time; any filing at a later date would be untimely and a violation of the water pollution regulation for which an enforcement action could commence.

The MSD treats the sanitary wastes in the Chicago metropolitan area and in addition to three major treatment plants, it operates certain other smaller plants, one of which is the Orland Park Plant. The Plant has a present design capacity of 0.8 MGD and was scheduled to be discontinued before the tertiary treatment effluent requirements became effective. The Plant is a trickling filter type plant consisting of a pumping station, primary settling tank (Imhoff), trickling filter and final tank (R.37). The effluent is discharged into McGinnis Slough which was described as a slough of roughly 313 acres with an average depth of about two feet which is almost totally covered with submerged weeds called sago (R.192). Because of a contract dispute which led to a lawsuit and curtailment of sewer construction activities the date for abandonment of the Plant has been deferred beyond July of 1972. The unusual situation which brought about the present state of events was not disputed. In fact the parties were able to stipulate to the following facts (R.28-32). In 1967, the District planned to abandon its Orland Park Sewage Treatment Plant by construction of an interceptor sewer which would divert the sewage to the District's Calumet Treatment Plant. On April 4, 1968 a contract in the amount of \$3.5 million for the interceptor sewer was awarded to Peter Kiewit Sons, Inc. The contract called for the completion of the interceptor in 690 days. After construction on the interceptor had begun the contractor notified the District that it considered the contract rescinded and filed suit in the federal court. The contractor also abandoned the job, and on December 23, 1968, the Board of Trustees of the Sanitary District declared the contract forfeited. After advertisement and other proper procedures

the contract was finally re-let on July 8, 1971 to American Structures, Inc. The new contractor was to begin work in August 1971. No reasons appear in the record for the long delay from December 23, 1968 to July 8, 1971, and we can make no judgment as to whether the District did all it could to shorten this period.

In addition to the sewer construction the MSD has proposed additional treatment facilities which will improve the quality of treatment and enlarge the capacity of the Plant. Improved operation of both the trickling filter system and aerated lagoon is proposed. A chemical addition facility is planned which will provide for chemical coagulation to enhance settling and removal of solids. The Plant interim facilities are designed as a temporary measure. The temporary facilities as well as the existing plant will be phased out upon completion of the sewer system. The interim facilities will increase the facility's capacity and improve the plant's effluent quality.

Unfortunately alternative treatment with portable, temporary treatment facilities was not dealt with in any depth in the record. Installation of package treatment plants designed to be easily dismantled and which would consequently have a high salvage value and could be easily relocated to other sites may have been the best way to go in this case. There is virtually no testimony on this subject, however, and we are thus unable to make any evaluations or decisions on the subject.

Mr. Melvin Doogan, the Village President of Orland Park testified as to several commitments which the Village made in anticipation of growth including the construction of a fieldhouse, increasing police service, and providing for additional snow removal service (R.93-94, 102). The Village must now be somewhat chastened after extending itself and committing funds to realize that expected income has been significantly delayed. It is to be hoped that other municipalities are put on notice by this case that as a fundamental requirement they must have adequate treatment facilities to accommodate sensible growth.

In briefest summary the case presented to the Board was a request by the District to be allowed to increase the present capacity of the plant and to be allowed to operate the plant until an interceptor sewer, presently under construction, was completed and abandonment of the existing plant could be effected. The hardship which the District put forth was the necessity of making the expenditure for tertiary treatment, approximately \$500,000, on a plant which would have a useful life of about one year. The Village introduced testimony about the hardship resulting from a program of construction of public improvements embarked upon by it in anticipation of greatly increased growth of the community.

Thus, in this matter as in all variance proceedings the Board has the job of balancing the elimination of the admitted pollution by denying the requested variance against the countervailing benefits which would accrue if the variance is granted. All the factors which

impinge on this question must necessarily be presented for the Board to make the most appropriate, well informed decision. In each variance case which comes before us we must weigh the asserted arbitrary or unreasonable hardship on the petitioner against the harm to the citizenry as a whole, that is, the harm to the environment. In this case we must consider whether the harm done to McGinnis Slough is so great as to outweigh the hardship which petitioner would suffer should the variance be denied. We find that the harm to the Slough in this case is not of such magnitude as to prevent our granting a license to pollute in this case. Mr. Michael Bronoski, a fish biologist for the Cook County Forest Preserve District, testified that in effect the damage to the slough from the sewage treatment plant has already been done and that in the next two years, in terms of the aquatic life, there would not be any significant impact on the slough from the Plant's effluent (R.213-215, 218-219).

We grant the requested variance for one year, until September 1, 1972 subject to several conditions enumerated below. The Environmental Protection Act states that any variance granted under the Act is limited to one year and then may be extended only if satisfactory progress has been shown. If the petitioner will need a further exemption from prosecution beyond that time it should take the precaution of filing a further petition some 90 days before the date of termination of the instant grant. The statute explicitly authorizes the Board to "impose such conditions as the policies of this Act may require" when granting a variance (§ 36(a)). Several conditions are required here to further the purposes of the statute. First, we shall require the District to submit quarterly progress reports. Periodic progress reports are necessary as a means of checking compliance with program schedules. The reports should detail progress to date and fully document and explain significant deviations from the program as originally planned. The first report shall cover the period from the present through September 30, 1971. The District should submit such reports to the Environmental Protection Agency and the Board a reasonable time after the expiration of the calendar quarter but in no case shall this period extend beyond three weeks. We do not wish to be in the position, a year from now, of discovering for the first time that there have been further delays.

Secondly we shall require the District to submit a complete detailed critical path construction schedule to the Environmental Protection Agency for their approval. This shall be done within 60 days from date. The Agency shall act upon the submission within 30 days thereafter.

Finally, the Act further requires this Board to impose a bond or other security in a case like this, the purpose of which is to assure the State of Illinois and all of its citizens that the proposed pollution abatement program will proceed and will do so in accordance with a schedule of which all parties are cognizant. As a further condition of this grant of a variance we shall require the MSD to post a bond or other security in the amount of \$500,000, which amount shall be paid to the State of Illinois upon default. The obligation of the bond shall be the performance of those tasks appearing on the Agency approved critical path construction schedule due to be performed by September 1, 1972.


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

ORDER

The Board having considered the transcript and exhibits in this proceeding hereby grants a variance to the Metropolitan Sanitary District of Greater Chicago (District) subject to the following conditions:

1. Variance from the Regulation SWB-14 relating to effluent quality as regards BOD and suspended solids is granted until September 1, 1972.
2. The District shall proceed with its program for enlargement and improvement of the existing treatment facilities to provide a higher quality of treatment during the interim period before the Plant is abandoned.
3. The District shall submit to the Environmental Protection Agency and the Board quarterly reports on the progress of its program. The first report shall cover the period from the present through September 30, 1971, with each subsequent report covering the calendar quarter. The reports shall be submitted in a reasonable time, not to exceed 3 weeks after the last date reported on.
4. The District shall post with the Environmental Protection Agency, on or before October 15, 1971, and in such form as the Agency may find satisfactory, a bond or other security in the amount of \$500,000, which sum shall be forfeited to the State of Illinois in the event that the District on September 1, 1972 has not performed those tasks which appear on the District's critical path construction schedule approved by the Environmental Protection Agency as due to be performed by that date.
5. Failure to adhere to any of the conditions of this variance shall be grounds for revocation of the variance.

I, Regina E. Ryan, Clerk of the Illinois Pollution Control Board, hereby certify that the Board adopted the above Opinion and Order on the 16 day of September, 1971.



Regina E. Ryan, Clerk
Illinois Pollution Control Board