

ILLINOIS POLLUTION CONTROL BOARD
March 17, 1994

ATLANTA MEADOWS, LTD. AND,)	
R.O.C.G.P. CORP. GENERAL PARTNER,)	
)	
Petitioner,)	
)	
v.)	PCB 93-72
)	(Variance)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (by C.A. Manning):

This matter is before the Board on Motion to Reconsider or in the alternative a Motion to Clarify the Board's January 20, 1994 order and opinion filed pursuant to 35 Ill. Adm. Code §§101.246 and 101.300. The instant motion was filed on February 24, 1994, by the Illinois Environmental Protection Agency (Agency). This matter originally was before the Board on an amended petition for variance filed by Atlanta Meadows Ltd. and R.O.C.G.P. Properties, Inc. (Atlanta) on July 19, 1993. Atlanta requested variance from 35 Ill. Adm. Code § 304.120(c), Deoxygenating Waste, and 35 Ill. Adm. Code § 304.141(a), National Pollutant Discharge Elimination System (NPDES) permit Effluent Standards in order to continue operating its waste water treatment plant (WWTP) for Mobet Meadows Mobile Home Park in Rock Island County, Illinois, while coming into compliance. The Board granted the requested relief on January 20, 1994.

In ruling upon a motion for reconsideration the Board is to consider, but is not limited to, error in the previous decision and facts in the record which may have been overlooked. (35 Ill. Adm. Code §101.246(d).) In Citizens Against Regional Landfill v. The County Board of Whiteside County (March 11, 1993), PCB 93-156, we stated that "[t]he intended purpose of a motion for reconsideration is to bring to the court's attention newly discovered evidence which was not available at the time of the hearing, changes in the law or errors in the court's previous application of the existing law. (Korogluyan v. Chicago Title & Trust Co. (1st Dist. 1992), 213 Ill. App.3d 622, 572 N.E.2d 1154, 1158)."

On reconsideration, the Agency argues that the applicable standards do not create arbitrary or unreasonable hardship, or, if so, that this hardship is self-imposed. The question of hardship was raised by the Agency in its recommendation to the Board filed on October 19, 1993. While the Agency's argument is more specific than that raised earlier before the Board, it is

still presents their original argument but in a different fashion. The Board considered the Agency's hardship argument at that time, but rejected it in favor of the policies and reasons stated in the Board's January 20, 1994 order and opinion. Accordingly, the Board denies the motion for reconsideration.

Alternatively the Agency requests clarification of the Board's order and opinion. The Agency requests that the Board amend its order to include interim limits of 10 mg/l for biochemical oxygen demand (BOD₅) and 12 mg/l for total suspended solids (TSS) during normal flow periods and immediately after rainfall events and 45 mg/l during rainfall events. Atlanta in its reply to the Agency's motion to clarify filed on March 9, 1993, states that although it indicated its willingness to accept such interim limits in its response to the Agency recommendation filed on October 27, 1994, it objects to interim limits if such limits do not address or provide for a biomass recovery period after rainfall events. The Agency also requests the Board to clarify Condition D of the Board's order and opinion of January 20, 1994. Atlanta states that it does not object to the condition being clarified.

The Board believes that it may be appropriate to allow for a period of time after a rainfall event to allow for biomass recovery. However, neither the Agency nor Atlanta offer any argument as to a reasonable period of time for Atlanta's biomass to recover after rainfall events. The record does not aid the Board in determining the appropriate time period for the biomass recovery to take place. However, it is clear that an interim limit restricting BOD₅ and TSS discharges to not exceed 45 mg/l is appropriate. The Board will add the interim limit to Condition C of this order. Finally, as the parties state Condition D of the January 20, 1994 order was intended to read "Atlanta Meadows LTD. and R.O.C. Corporation shall remediate the unnamed tributary by removing unnatural algae growth and sludge deposits attributable to its discharge once compliance has been achieved" and will be corrected in this order.

The order below replaces the previous order of January 20, 1994.

ORDER

Atlanta Meadows, LTD. and R.O.C. Corporation (Atlanta Meadows) are granted a variance from 35 Ill. Adm. Code § 304.120(c), Deoxygenating Waste, and 35 Ill. Adm. Code § 304.141(a), National Pollutant Discharge Elimination System (NPDES) Effluent Standards, subject to the following conditions:

- A) Variance shall terminate according to the

following:

- 1) Should the City of East Moline decide to extend its sewer lines to Atlanta Meadows' facility, the variance shall terminate on the earlier of:
 - a) the date compliance is demonstrated, or
 - b) the date of completion and connection of the facility to the City of East Moline sewer lines, or
 - c) August 31, 1996.
- 2) Should the City of East Moline fail to decide or decides not to extend its sewer lines to Atlanta Meadows' facility by August 31, 1994, the variance shall terminate on the earlier of:
 - a) the date compliance is demonstrated, or
 - b) the date of completion of construction of a lagoon system and compliance is demonstrated, or
 - c) August 31, 1995.
- B) During the term of the variance Atlanta Meadows, LTD. and R.O.C. Corporation shall take all reasonable measures with their existing facility to minimize the level of BOD₅ and total suspended solids discharged from its outfall into the unnamed tributary. at no time during the variance shall BOD₅ and TSS discharges exceed 45 mg/l.
- C) Atlanta Meadows LTD. and R.O.C. Corporation shall continue construction of the lagoon system to achieve compliance with the Board regulations on September 1, 1994, if the City of East Moline decides not to extend the sewer lines or does not make a decision.
- D) Atlanta Meadows LTD. and R.O.C. Corporation shall remediate the unnamed tributary by removing unnatural algae growth and sludge deposits attributable to its discharge once

compliance has been achieved.

Within 45 days of the date of this order, Petitioner shall execute and forward to Charles Gunnarson, Division of Legal Counsel, Illinois Environmental Protection Agency, 2200 Churchill Road, Post Office Box 19276, Springfield, Illinois 62794-9276, a Certification of Acceptance and Agreement to be bound to all terms and conditions of this variance. The 45-day period shall be held in abeyance during any period that this matter is being appealed. Failure to execute and forward the Certificate within 45 days renders this variance void and of no force and effect as a shield against enforcement of rules from which variance was granted. The form of said Certification shall be as follows:

CERTIFICATION

I (We), _____,
hereby accept and agree to be bound by all terms and conditions
of the order of the Pollution Control Board in PCB 93-72, March
17, 1994.

Petitioner _____

Authorized Agent _____

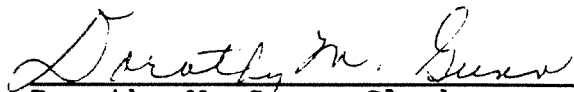
Title _____

Date _____

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act (415 ILCS 5/41) provides for the appeal of final Board orders within 35 days of the date of service of this order. (See also 35 Ill. Adm. Code 101.246, Motion for Reconsideration.)

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 17th day of March, 1994, by a vote of 6-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board