

ILLINOIS POLLUTION CONTROL BOARD
October 28, 1971

CITY OF OLNEY)
)
) #PCB 71-223
 v.)
)
 ENVIRONMENTAL PROTECTION AGENCY)

MR. PAUL A. CROEGAERT (BRAZITIS & CROEGAERT) appeared on behalf of the Petitioner;

MR. DELBERT D. HASCHEMEYER, appeared on behalf of the Agency

OPINION OF THE BOARD (BY MR. DUMELLE):

The City of Olney, a town of 9,153 (R.14) in Richland County in Central Illinois, operates a two-year-old secondary treatment plant designed to serve a population equivalent of 40,000 people (R.15). The plant discharges into an unnamed tributary of the Fox River (R.90, EPA Ex. 2).

On July 30, 1971, Olney petitioned the Board for a variance from the deadline date requirements in Sanitary Water Board Rules and Regulations SWB-14 (hereafter SWB-14). Instead of the series of dates in the rules which conclude with completion of construction of improved facilities by July, 1972, Olney sought to be allowed to conform to the following deadline dates:

Submit plans and specifications	January 1972
Begin construction	April 1972
Complete construction	January 1973

The plant improvements which need to be made are provision for tertiary treatment, storm runoff retention, provision for sludge handling and effluent chlorination.

Regulation SWB-14 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 City 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

Modern Foundry for violations which occurred later than eighteen months ago. As a result of the admission the Agency did not present any primary case, and the first evidence in the record is that of Modern Foundry offered in mitigation of any possible penalty to be imposed by the Board.

Modern Foundry submitted a Letter of Intent to the Air Pollution Control Board in July of 1967. Based upon the process weight of the cupola and the calculated emissions gotten from the Letter of Intent, Modern Foundry was violating the regulations then passed by the Board. The Board required that Modern Foundry submit an Air Contaminant Emission Reduction Program (ACERP) and so advised Modern Foundry on many occasions. The initial date the ACERP was due was April 15, 1968, but such a program was not submitted until September 4, 1969. (Comp. Ex. 7) The program was that Modern Foundry would have a wet scrubber installed by the National Dust Collector Corporation, which scrubber would guarantee a collection efficiency of 99.6%. The scrubber was to be installed during Modern Foundry's two-week shutdown in July of 1970 and by September of 1970 Modern Foundry would have made the necessary adjustments to have the equipment properly operating. The ACERP was approved by the Air Pollution Control Board on September 23, 1969. In a September 30, 1969 letter to Modern Foundry advising it that the ACERP had been approved, Mr. Klassen, the Technical Secretary to the Air Board, also advised Modern Foundry that under the Board regulations "periodic reports" would be necessary. (Comp. Ex. 8) Only two "reports" were sent by Modern Foundry. One was a letter dated February 13, 1970, in which Modern Foundry advised the Technical Secretary that the originally proposed control device would not work and that a new one was being installed. (Comp. Ex. 10) The Technical Secretary responded in a letter dated March 19, 1970 and said that "from your progress reports" it appeared that Modern Foundry would not meet its compliance date. If this were true, the letter went on, Modern Foundry was requested to file a revised ACERP. It did not, and it wasn't until August 19, 1970, that Modern Foundry again communicated with the State -- this time with the then-new Environmental Protection Agency. Modern Foundry advised the Agency that the emission control equipment had been delivered, and that it expected a December 31, 1970 completion date. In addition, the Agency was advised of the problems faced by Modern Foundry in obtaining water from the City of Mascoutah for use in the wet scrubber. The Agency advised Modern Foundry in a letter dated September 21, 1971 that in order to have any extension of the ACERP approved, Modern Foundry must file for a variance under the Environmental Protection Act. This was never done.

Two other aspects of the City's planned program were not made entirely clear at the hearing and need to be dealt with. There must be improvement from the present method of handling sludge to eliminate the undesirable seepage from the drying beds. Additionally, the City must move with all dispatch to provide chlorination facilities to treat the plant effluent. We will not relax this requirement. The City of Olney must proceed to provide for chlorination in accord with the deadline date in SWB-14, July 1, 1972.

The picture which emerges here is of a municipality which is doing something to resolve the problem at its overloaded treatment plant. With pretreatment from industrial dischargers the influent flow will be at the plant's design capacity and improvements including tertiary treatment, chlorination, sludge handling and storm retention can be effected for approximately \$725,000 (R.42). Handling the volume and strength without pretreatment will require improvements estimated to cost \$1,725,000 (R.42). The question posed to the Board is whether compliance with the present schedule of completion of improvements by July, 1972 will constitute an arbitrary or unreasonable hardship inasmuch as the City maintains that it needs an additional six months to evaluate the efficacy of the operation of its industrial waste ordinance. Ancillary to that question, is whether the City is moving aggressively enough to encourage, cajole and force its industrial users to pretreat their wastes to eliminate any undue burden on the municipal plant. It is clear that Olney's move has been in the right direction with the enactment of the industrial waste ordinance and it is equally clear that the City's use of the ordinance has been effective although different judgments may be made as to the aggressiveness which the City has applied to instituting criminal enforcement actions under the ordinance. We grant the request for more time in this case as it would be unreasonable to force the City to spend \$1,725,000 to improve their plant when they can do so for less than half that amount if their waste control ordinance is fully efficacious.

We grant the requested variance in accordance with the dates proposed by the City, as a six month extension of existing deadlines, subject to several conditions. 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 60 days before the present variance expires. The first condition of this grant is that the City proceed immediately to provide for chlorination of its plant effluent. Secondly, we shall require the City to submit monthly progress reports. Periodic progress reports are necessary as a means of checking compliance with program schedules. 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. 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 November 30, 1971.

Counsel for the City of Olney requested that the Board authorize the City to issue bonds for treatment plant improvements without referendum in accordance with Section 46 of the Environmental Protection Act. After an order of the Board to abate the pollution problem the municipality can proceed to raise a Sanitary Fund for the purpose of carrying out the order of the Board. Section 46 states that "No election or referendum shall be necessary for the issuance of bonds...." We shall specifically order the City to proceed with its improvement plans and thereby actuate the mechanism by which the City can raise the needed funds.

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 orders as follows:

1. Variance from adherence to the deadline dates specified in SWB-14 for submission of plans and specifications and for commencement of construction of improvements (except for chlorination facilities) is hereby granted for one calendar year from date with the following dates made applicable in lieu of those originally specified:

Submit Plans and Specifications	January 1, 1972
Begin Construction	April 1, 1972

2. The City of Olney shall proceed with all possible speed to provide for chlorination of the treatment plant's final effluent by July, 1972 in accordance with the timetable in SWB-14.
3. The City of Olney shall abate its discharge of inadequately treated sewage in violation of the Environmental Protection Act and regulations thereunder in accordance with the revised timetable outlined in paragraph one of this Order.
4. The City of Olney shall submit to the Environmental Protection Agency and the Board, monthly reports on the progress of its program including its plan for effluent chlorination and sludge handling. The first report

shall cover the period from the present through November 30, 1971. The reports shall be submitted in a reasonable time not to exceed two weeks after the last date reported on.

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 28 day of October, 1971.



Regina E. Ryan
Illinois Pollution Control Board