

ILLINOIS POLLUTION CONTROL BOARD
April 21, 1988

IN THE MATTER OF:)
)
PETITION OF THE CITY)
OF TUSCOLA TO AMEND) R83-23
REGULATIONS PERTAINING)
TO WATER POLLUTION)
)
ADOPTED RULE. FINAL ORDER.

OPINION AND ORDER OF THE BOARD (by J. Marlin):

This matter comes before the Board on a Petition to Amend Regulations filed by the City of Tuscola (Tuscola) on October 31, 1983. Specifically, it is seeking relief from the effluent limitations of 35 Ill. Adm. Code 304.120(c), Deoxygenating Wastes and Suspended Solids, and Section 304.123(c), Phosphorus. Section 304.120(c) would impose effluent limits of 10 milligrams per liter (mg/l) for five-day biochemical oxygen demand and 12 mg/l for suspended solids (SS). Section 304.123(c) would impose an effluent limit of 1 mg/l for phosphorus. Instead, Tuscola wishes to be subject only to effluent limits of 20 (mg/l) BOD₅ and 25 mg/l for (SS). Also, Tuscola, is requesting relief from Section 304.105, Violation of Water Quality Standards, as it relates to Section 302.212(a),(b) and (c), Ammonia Nitrogen and Un-ionized Ammonia. Tuscola is requesting such relief so that it may upgrade its wastewater treatment facility to a lesser extent than what would be necessary in order to achieve compliance with the existing, general regulations.

On October 15, 1987, the Board proposed a rule for First Notice in this matter. The notice and text of this proposal were published in the Illinois Register on November 6, 1987. 11 Ill. Reg. 17995. As a result, the First Notice Comment period expired on December 23, 1987. The Department of Commerce and Community Affairs (DCCA) filed the only comment during First Notice. In its comment, DCCA stated that the proposed rule would have no economic effect on small businesses regulated by the rule. (P.C. #3).

At its meeting on April 12, 1988, the Joint Committee on Administrative Rules considered and did not object to the proposed rule. The rule that the Board adopts today is unchanged from what was proposed at First Notice.

A hearing was held in this matter on February 3, 1984 in Tuscola; members of the public were present. The transcript generated by that hearing will be cited herein as "R". At that hearing, the Hearing Officer granted the Illinois Environmental Protection Agency's (Agency) motion to incorporate the record in

PCB 83-77, which was a variance proceeding concerning Tuscola's wastewater treatment plant discharge. (R. 5).

After hearing, great delay ensued in this proceeding due primarily to Tuscola's own actions. On April 5, 1984, the Board granted Tuscola's Motion to Stay Decision in this matter to allow Tuscola and the Agency to continue discussions directed at identifying and designing an affordable alternative treatment system. By its Order, the Board granted the stay until August 6, 1984. The Board also directed Tuscola to file a progress report concerning these negotiations on or before that date. On August 6, Tuscola did file a Progress Report which basically stated that the work on design reevaluation had not yet been completed.

On February 1, 1985, the Hearing Officer issued a Report. In that Report, the Hearing Officer stated that counsel for Tuscola had promised on January 10, to send the Hearing Officer a written report on the status of this proceeding. The Report concluded by stating that no such report had yet been received by the Hearing Officer. On February 7, 1985, the Board issued an Order which in part stated:

The Board had been aware of continuing negotiations between the City of Tuscola and the Illinois Environmental Protection Agency to develop a feasible plan both for a related variance case (PCB 84-146) and for this regulatory proceeding. However, the record in this matter is silent as to what has happened in the last six months.

Unless the City of Tuscola files with the Clerk of the Board within twenty-one days a letter of intent to proceed promptly in this matter, this proceeding will be subject to dismissal.

In a letter to the Clerk of the Board dated February 28, 1985, Tuscola claimed that it intended to "proceed promptly with this matter". Tuscola asserted that based on discussions with the Agency, it was "prepared to resume its site-specific rulemaking petition and proceed to final action with the Board".

By an Order of March 12, 1985, the Hearing Officer ordered that Tuscola submit a written account concerning its further meetings with the Agency as well as supply more information concerning waters which might be affected by Tuscola's discharge. Also, it was ordered that Tuscola contact the Hearing Officer so that he could schedule another hearing within 30 days. Tuscola responded to the Hearing Officer by a letter dated April 11, 1985. The letter detailed reasons for a further delay:

There exists a dispute between the city and the Illinois Environmental Protection Agency

concerning what will be recommended to the Pollution Control Board. The Agency outlined various programs which the city could institute which would help the Illinois Environmental Protection Agency evaluate the site specific relief requested by the city. The city is now evaluating those programs.

The city is now in the process of making a decision whether to continue to pursue this regulatory relief, and will know within the next two weeks whether that will be done. At that point, the hearing officer will be contacted and a hearing will be set in accordance with the hearing officer's wishes.

Over one month later, in a letter to the Hearing Officer, dated May 17, 1985, Tuscola asserted that "no further hearings would be necessary". In a subsequent letter dated July 2, 1985, Tuscola requested that previous letters and filings, which detailed its discussions with the Agency, be made part of the record. Tuscola also stated:

As we had previously reported, Tuscola and the IEPA have had discussions concerning the resolution of this matter. Those discussions have now terminated.

Tuscola believes that it has decisively proven that it is entitled to the relief requested. Tuscola does not believe that any further substantive hearings are necessary and, therefore, requests that the Board decide this matter on the record before it....

Consequently, 17 months after the hearing was held in this matter, Tuscola requested that the Board make a decision on its petition for site-specific relief.

Additional delay then resulted due to the preparation of an Economic Impact Study by the Department of Energy and Natural Resources (DENR). By a letter dated September 3, 1985, DENR informed the Hearing Officer that DENR had determined that an Economic Impact Study (EcIS) was necessary for this proceeding. On April 20, 1987, 19 months later, DENR filed the EcIS for this proceeding. After further discussions between Tuscola, the Agency, and DENR, a hearing on the EcIS was held on July 29, 1987 in Tuscola. The transcript generated by this EcIS hearing will be cited herein as "Ec.R."

General Information

In its Opinion and Order of January 24, 1985, which denied Tuscola a variance extension request under Docket PCB 84-146, the Board described Tuscola's wastewater treatment facility.

Tuscola is located in Douglas County, Illinois, and has a population of approximately 4,600. [The EcIS states that Tuscola's population is approximately 4,300. Tuscola's post-EcIS hearing comments sets the population at 2,500]. The City owns and operates two sewage treatment plants. The South Plant is 20 years old [1985 age] and employs primary sedimentation and conventional activated sludge treatment. It is designed to handle approximately 0.56 million gallons per day (MGD) but receives only 0.2 MGD. This creates an organic underload resulting in poor settling of solids. Discharge from the South Plant is to Scattering Fork Creek, which feeds into the Embarras River. Downstream, water from the Embarras is pumped into a side channel reservoir by the City of Charleston. Charleston uses this reservoir as a public water supply and for recreational purposes.

The North Plant was built in 1938 with a design capacity of 0.28 MGD. It employs secondary treatment consisting of an Imhoff tank, trickling filter and sedimentation tank with sludge drying beds. During excess wet weather flows, however, the Imhoff tank is overloaded, sludge solids cannot be properly handled and flow bypasses this plant. Discharge is to the Hayes Branch, to the Hackett Branch, to Scattering Fork Creek 3.2 miles downstream from the South Plant outfall, and finally to the Embarras River.

City of Tuscola v. Illinois Environmental Protection Agency, 62 PCB 411-12 (1985).

At the EcIS hearing held in July of 1987, counsel for Tuscola stated that the two plants had not been altered since the February, 1984 hearing. (Ec.R. 60).

As stated earlier, Tuscola is seeking site-specific relief so that it may upgrade its current wastewater treatment facility in a manner that is significantly less costly when compared with modifications that would be necessary to achieve compliance with currently applicable regulations. At hearing, held in February 1984, Tuscola asserted that modifications to the wastewater

treatment facility, which would result in the facility's compliance with current regulations, would cost \$6.1 million. (R. 6). The EcIS sets a present capital cost for the full compliance conventional treatment alternative at \$6,620,800. (EcIS, p. vi). This alternative has been called Strategy 1 by the EcIS.

Instead of utilizing the full compliance alternative, Tuscola has proposed a less costly treatment alternative in connection with its requested site-specific relief. This alternative pursued by Tuscola was labeled Strategy 4 by the EcIS. For clarity, the Board will also refer to this treatment alternative as Strategy 4.

Tuscola stated at hearing that Strategy 4 would cost approximately \$2.7 million. (R. 7). The EcIS estimates the capital cost for Strategy 4 at \$3,392,600. (EcIS, p. vi). Strategy 4 calls for the abandonment of the North plant. The EcIS details further the proposed modifications which constitute Strategy 4:

1. Construction of a pump station at the north plant to pump wastewater through a force main to the south plant.
2. Installation of a new pump station at the south plant to handle the increased dry weather and wet weather flows.
3. Construction of a storm water first flush basin and circular clarifier with a chlorinated overflow to Scattering Fork Creek.
4. Addition of an activated sludge tank, a secondary clarifier and aerobic digesters.
5. Construction of sludge drying beds.
6. Addition of wet sludge handling facilities and land application equipment.
7. Addition of chlorination facilities.
8. Interconnecting piping and miscellaneous appurtenances.
9. Standby generator.

(EcIS, p. 15)

Strategy 4 is similar in many respects to the full compliance alternative of Strategy 1 except that Strategy 4 does not contain the following treatment components: tertiary filters (for BOD and SS control); nitrification tankage, blowers and appurtenances

(for ammonia nitrogen control); and chemical addition and expanded sludge handling facilities (for phosphorus control). (EcIS, p. 15).

Technically Feasible and Economically Reasonable Alternatives

Generally, the Board grants site-specific relief from the requirements of general regulations only upon a showing that it is not technically feasible or economically reasonable to comply with the general regulations. A recent Appellate Court decision has upheld this standard.

In Central Illinois Light Company v. Illinois Pollution Control Board, No. 3-86-0841 (3d Dist. July 24, 1987), the Third District affirmed the Board's denial of a site-specific rulemaking proposal of Central Illinois Light Company (CILCO). CILCO argued on appeal that the Board did not properly apply the statutory criteria in its evaluation of the record. The Third District rejected this position and stated:

After a thorough review of the evidence presented at the hearing in this case, we conclude the Board's determination that CILCO failed to demonstrate compliance is technically infeasible and economically unreasonable are amply supported by the record. As the Board pointed out in denying a motion by CILCO for a rehearing, these determinations regarding technical feasibility and economic reasonableness alone are sufficient to support the decision of the Board.

(Id. slip op. at 10).

In order to evaluate the merits of Tuscola site-specific proposal, the Board will examine whether there are any wastewater treatment alternatives which would provide compliance with the existing regulatory requirements and at the same time be technically feasible and economically reasonable for Tuscola.

The first step in that examination is to identify treatment alternatives which would enable Tuscola to comply with current regulations. The EcIS evaluates in detail seven treatment alternatives of which three are purported to afford compliance with existing regulatory requirements.

The first alternative is the full compliance alternative described by Tuscola as costing over \$6 million, referred to as Strategy 1. As stated earlier, the modifications included under Strategy 1 are essentially the same as those under Strategy 4, Tuscola's proposal, except that Strategy 1 provides for further controls to reduce BOD, TSS, ammonia nitrogen, and phosphorus. Under Strategy 1, BOD and SS effluent levels would be reduced by high rate tertiary filters. Strategy 1 would also employ a

single stage nitrification process which would "reduce both carbonaceous and nitrogenous oxygen demand in a single stage of aeration, clarification, and sludge return". This strategy would remove phosphorus "by adding chemicals to form insoluble phosphates which would precipitate in the primary or final clarifiers." Sodium aluminate is the chemical that would be used to precipitate out the phosphorus. (EcIS, p. 11-12).

The EcIS states that Strategy 1 has a capital cost of \$6,620,800 and an annual operating cost of \$196,700.

The EcIS has also identified two other treatment alternatives which would provide full compliance with existing regulations. Each alternative is a variation of "land treatment" technology. Essentially, "land treatment" entails the treatment of wastewater in an aerated lagoon with the resulting nutrient-rich effluent applied to crops or grass. Consequently, no effluent would be discharged to the waters of the State. The two additional compliance alternatives were identified by the EcIS as Strategies 2A and 2B. Strategy 2A would involve the irrigation of 230 acres of corn and interseeded rye at a hydraulic rate of 35 inches/year. Given the times of the year available for irrigation, this amounts to an average application of 1 inch per week. Strategy 2B is designed to provide for the irrigation of 90 acres of perennial grasses at a hydraulic rate of 90 inches per year. This rate of application equates to 2.6 inches per week. (EcIS, p. 19).

At the EcIS hearing, John Sheaffer, Ph.D. described in detail the treatment process of the wastewater prior to land application.

The [land treatment] system that we use for comparative purposes [is] the deep aerated lagoon, what we do is make sure that the base of the lagoon is at least two feet above seasonal high ground water table, which means we build it up if we need to. We want at least 15 feet of working depth in it. The wastes are injected through a comminutor or grinder pump and put in at the bottom of a filled lagoon. So, there's 15 feet of aerated water always between your nose and any untreated waste. So, we avoid any exposure to the atmosphere of untreated waste. The air is injected at the bottom of the lagoon through static tube aerators, which I describe them as like a stovepipe with three pinwheels in, you know, each free-moving, and one moves to counter one another so we get a good distribution of the air. The air is put in at the bottom. These are resting on the bottom above the space we provided for the sludge storage. In this

design, we provided 36 days of treatment. In other words, the wastes undergo 36 days of aerated treatment.

...[T]he wastes stay in that aerated treatment cell for 36 days, and then they are taken during the growing season from that treatment cell through a chlorine contact tank and then out into the irrigation system. In the non-growing season or a period of unusually wet weather, they go into the winter storage, which when this report was done we estimated 120 days of winter storage.

...The [aerated treatment] cells are engineered out of compacted clay liners to prevent any leakage, and we call for monitoring wells upgrading and downgrading so that one can demonstrate the effectiveness of the system.

(Ec.R. 73-75)

With regard to the biological aspects of treatment, Sheaffer testified:

[I]t's the same biological processes in any treatment plan [sic] except we're not trying to accumulate biomass like in an activated sludge. We're not bringing bacteria back to increase the biomass. What we are doing is just providing a long period of time. So, we've substituted time for sludge accumulation in a treatment process, and by going with engineered deep treatment cells, you can provide time.

(Ec.R. 75).

The deep aerated treatment cells are designed to accumulate a 20 year accumulation of sludge. As a result, sludge does not have to be handled at any time during the first 20 years of operation. (Ec.R. 60).

Sheaffer also testified about the quality of the effluent that is applied to the land. With regard to BOD₅ and suspended solid concentrations, the effluent would have concentrations lower than 10 mg/l BOD₅ and 12 mg/l SS, which is the standard that would apply if the effluent was discharged to waters of the State. Also, due to the relatively long treatment period most of the ammonia nitrogen will have been converted to nitrate nitrogen. (Ec.R. 76). According to Sheaffer, a land treatment facility at the Hamilton Lakes hotel and office complex, near O'Hare airport, irrigates grass with an effluent containing the following concentrations: BOD₅ of 3 mg/l; suspended solids of 5

mg/l; and fecal coliform of zero counts. The Hamilton Lakes facility has a year round capacity of 250,000 gallons per day. The capacity of a land treatment facility required for Tuscola would be 600,000 gallons per day. (Ec. R. 62-63).

The issue concerning viral transmission via the treated effluent, was also addressed at the EcIS hearing. Stephen John stated that as the treated effluent percolated through the soil, viruses would be effectively removed.

In a soil characteristic of this part of Illinois [Tuscola area], there would be complete removal of bacteria and viruses in relatively short distances; I think distances on the order of five to ten feet of movement through the soil which provide complete removal of both bacteria and viruses.

(Ec.R. 79)

On this same issue, the EcIS also quotes an authority as stating:

The land treatment system removes viruses to a higher degree than conventional treatment and disinfection systems. Treatment processes with longer detention times, such as in ponds and storage lagoons, have better removals than conventional activated sludge treatment.

(EcIS, p. 45).

The EcIS then relates this finding to Tuscola's situation

As applied to Tuscola, these conclusions indicate that the land treatment strategies would impose somewhat lower health risks than the conventional treatment strategies on downstream swimmers or users of Charleston city water or other potable water supplies drawn from the receiving waters. The difference in health impacts has not been quantified or monetized.

(EcIS, p. 45-46).

Also, Sheaffer testified that the operation of the aerated treatment cells as well as winter storage areas would not cause an odor problem. (E.R. 66, 76).

The EcIS presents cost estimates for the two land treatment alternatives. One set of capital cost estimates does not include any costs to purchase the land that will be irrigated by the treated effluent. This is in response to the assumption that it

would not be necessary for Tuscola to purchase the land. Rather, it is thought that Tuscola could negotiate an arrangement with current owners to accept the effluent for irrigation. (EcIS, p. 22). The EcIS also presents capital cost estimates which include the acquisition cost of land to be irrigated. This additional cost assumes a purchase price of \$3,000 per acre. (EcIS, p. 56). To account for transaction costs due to negotiating an agreement with current landowners, a higher percentage contingency was included in the annual operating costs for the land treatment alternatives than that what was included in the conventional technology alternative operating estimates. (EcIS, p. 23). The EcIS presents cost estimates for the land treatment as follows:

	<u>Without Land Purchase</u>		<u>With Land Purchase</u>	
	<u>Strategy 2A</u>	<u>Strategy 2B</u>	<u>Strategy 2A</u>	<u>Strategy 2B</u>
Capital Cost	\$3,064,300	\$2,748,200	\$3,254,300	\$3,018,200
Annual Operating Cost	\$75,000	\$78,300	\$64,600	\$73,900
		(EcIS, p. vi)	(EcIS, p. 56)	

There is nothing in the record to suggest that the conventional treatment alternative for full compliance, Strategy 1, is technically infeasible. Similarly, the land treatment alternatives of Strategy 2A and 2B, are technically feasible.

At the EcIS hearing, Sheaffer stated that the land treatment system at the Hamilton Lakes complex has been operating since December, 1980. (Ec.R. 63). He also stated that a land treatment system which will have a capacity of 595,000 gallons per day (Tuscola would require 600,000 gallons per day) is currently being constructed in Lake County. (Ec. R. 62, 64). Sheaffer also stated that there are approximately 25 private land treatment facilities currently under construction in Illinois. (Ec.R. 71). Stephen John testified that there are two municipal slow rate land treatment systems in the state, at Camp Point and Pleasant Hills. (Ec.R. 64). In response to questions whether a land treatment facility could be funded in part by the United States Environmental Protection Agency (U.S.EPA) as a demonstration project, John stated:

[M]y understanding is that the Federal Government at this point would not be interested in funding demonstration projects because throughout the country it's [land treatment] a thoroughly proven technology. It doesn't happen to be very common in

Illinois, but it's -- you know, it's widely used throughout the country, and I think the Federal Government -- USEPA would generally feel that there's no need for a demonstration to prove that it's an appropriate technology.

(Ec.R. 69).

The authors of the EcIS generally conclude that Tuscola would be a good location for land treatment due to the type of soil found in the area. (Ec.R. 80-82). The authors also assert that a land treatment is a flexible type of treatment method which could be easily expanded as the population of Tuscola expands. (Ec.R. 83-85).

Although land treatment is not currently in widespread use throughout the state, the record indicates that the land treatment alternatives of Strategy 2A and 2B are technically feasible methods of wastewater treatment for Tuscola.

Next, the Board needs to determine whether the costs for these technically feasible, full compliance alternatives are economically reasonable.

According to the EcIS, the present rates paid by Tuscola residents for sewage services are lower than rates charged by most other small communities in east-central Illinois. (Ec.R. 62, EcIS, p. 58). At the same time, Tuscola has the highest median household income, when compared to the same communities. (EcIS, p. 58).

The authors of the EcIS calculated the user charge per 1,000 gallons which would result from implementing each treatment alternative without the aid of a grant. The user charge for each technically feasible, full compliance alternative is presented below. Also, the user charge for Tuscola's proposed treatment alternative is shown.

	<u>User Charge Per 1000 gallon</u>
<u>Strategy 1: Full compliance --</u> Conventional Treatment	\$7.99
<u>Strategy 2A: Full compliance --</u> Land Treatment of 230 acres	
(Without Land Purchase)	\$3.72
(With Land Purchase)	\$4.16
<u>Strategy 2B: Full compliance --</u> Land Treatment of 90 acres	
(Without Land Purchase)	\$3.41

(With Land Purchase) \$3.52

Strategy 4: Tuscola's Treatment
Proposal With Site-Specific Relief \$4.16

(EcIS, p. 54).

Tuscola's present sewer rate is \$1.74 per 1,000 gallons. (EcIS, p. 58).

If Tuscola would employ a land treatment system, it could comply with current regulations as well as provide wastewater treatment at a user cost that is less than or equal to the user cost which would result from Tuscola's proposed treatment alternative. The economic impact resulting from *Tuscola's treatment proposal, which is dependent upon * a grant of regulatory relief, would be basically equivalent to the economic impact of complying with current regulations.

Tuscola proposes to upgrade its wastewater treatment facility at a cost of over \$3.3 million. This modification, for all of its cost, will still not bring Tuscola's wastewater discharge into compliance with current regulatory requirements. As a result, Tuscola is seeking to amend the State's regulations so that it will not be subject to the currently applicable standards. However, the record demonstrates that by using land treatment Tuscola can comply with current regulations at no more cost than the proposed modifications.

Given the information in the record, the Board concludes that compliance with current regulations is technically feasible and economically reasonable for Tuscola.

Phosphorus Control

Testimony received at the February 3, 1984 hearing primarily dealt with the issue of whether Tuscola should be granted relief from the effluent limitation for phosphorus as required by 35 Ill. Adm. Code 304.123(c). Section 304.123(c) imposes an effluent limitation of 1 mg/l of phosphorus. Specifically, the testimony centered around Tuscola's phosphorus discharge as it impacts the side channel reservoir, which is approximately 50 stream miles downstream from Tuscola's discharge.

The Agency and Tuscola each presented an expert witness; these expert witnesses generally had opposing views. Allison Brigham, an employee of the Natural History Survey (Survey) testified on behalf of Tuscola. She testified as to the work the Survey did under contract to Clark Dietz. (R. 45). At hearing, she stated:

[I]t would be very difficult to detect any measurable difference in phosphorus

concentration in the side channel reservoir as a result of reducing phosphorus concentrations in the Tuscola effluent.

The phosphorus contributions to the upper Embarras watershed are very complex, and they include point source discharges, but that is less than fifteen percent of the total phosphorus load to what was existing in Lake Charleston, and certainly those conditions haven't changed too dramatically since the data were collected in 1973.

(R. 17).

Brigham stated that data indicates that Tuscola's discharge amounts to three to nine percent of the water pumped into the side river channel reservoir during the time of low flow of the Embarras (R. 35-36). She also asserted that "a considerable amount of assimilation or uptake or cycling of the phosphorus can occur within fifty stream miles." (R. 18). She testified that a study conducted by Clark Dietz shows that "phosphorus concentrations declined even within two hundred yards of the [Tuscola] outfall... two and a half to twelve-fold, and significant further decreases occurred just within Scattering Fork...." (R. 19).

Donna Sefton, an Agency employee, testified on behalf of the Agency. Sefton stated that according to a 1973 United States Environmental Protection Agency's (U.S.EPA) National Eutrophication Survey, Tuscola's phosphorus contribution to Lake Charleston amounts to 42.5% of the phosphorus contribution from all point sources. Sefton asserted that an updated calculation finds Tuscola with a 53% contribution of the total point source discharges (R. 67). Sefton further testifies:

"[w]hen Charleston pumps into the side channel reservoir from the Embarras River in the summertime that we have documented that algal blooms occur after that, and that in the summertime non-point source contributions are at their lowest level and that point sources would tend to make up more of the percentage of the phosphorus loading in the Embarras River at that time, and that Tuscola is the largest of those point sources.

(R. 72-73).

Sefton also stated that during the summer months point sources contribute 35 percent of the total phosphorus loading in the Embarras. (R. 80). According to Sefton, this conclusion is based on the underlying assumption, determined from limnological literature, that all of the phosphorus from point sources in a

watershed will eventually contribute to the eutrophication of a downstream lake. (R. 83). Sefton concludes that if Tuscola controlled phosphorus to an effluent concentration of 1 mg/l, the currently applicable standard, the side channel reservoir would experience less algal growth. Similarly, she also claims the City of Charleston would not have to use as much copper sulphate in the reservoir; copper sulfate is a chemical used to control algae. (R. 88).

At the EcIS hearing, the Agency stated that its position with regard to phosphorus has changed since the 1984 hearing. The Agency has currently proposed a rule, docketed as R87-6, which would amend Section 304.123. According to the Agency, if the R87-6 proposal was adopted by the Board, Tuscola would be exempted from the requirements of Section 304.123 because of its distance from the side channel reservoir. At the EcIS hearing, counsel for the Agency stated, "But I would state that it would be the Agency's position that Tuscola should not be subjected to the phosphorus requirement since it would qualify [for an exemption] under a new proposal". (R. 59). However, the Agency, in its post-EcIS hearing comments seems to take a somewhat different position on this issue. The comments state, "Although the City [Tuscola] in the present proceeding has not adequately justified relief as to phosphorus, the City would eventually benefit from the Agency's proposal in PCB R87-6". The comments conclude with the recommendation that Tuscola's proposal be denied. (P.C. #2, p. 6).

Tuscola argues in its comments that the Agency only opposed the proposal due to the alleged effects upon the side channel reservoir from phosphorus. Tuscola views the R87-6 proposal as evidence that the Agency is no longer concerned about this possible impact. As a result, Tuscola concludes, "Thus, the only parameter of concern to the Agency in this proceeding is no longer of concern to them". (P.C. #1, p. 4).

The Board will grant Tuscola relief to the extent that it will not be subject to the 1 mg/l effluent standard for phosphorus as prescribed by Section 304.123(c). In reaching this conclusion, the Board has considered the conflicting testimony in the record and taken into account the distance of Tuscola from Charleston and the fact that the reservoir in question is not a main stream reservoir.

However, Tuscola is denied the remainder of the relief that it has requested, since it is technically feasible and economically reasonable for it to comply with current regulations.

ORDER

The Board hereby adopts, as final, the following amendments to be filed with the Secretary of State.

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE C: WATER POLLUTION
CHAPTER I: POLLUTION CONTROL BOARD

PART 304
EFFLUENT STANDARDS
SUBPART B: SITE SPECIFIC RULES
AND EXCEPTIONS NOT OF GENERAL APPLICABILITY

Section 304.215 City of Tuscola Wastewater Treatment Facility
Discharges

The requirements of Section 304.123(c) shall not apply to the discharges from the City of Tuscola's wastewater treatment facility into Scattering Fork Creek, Douglas County, Illinois.

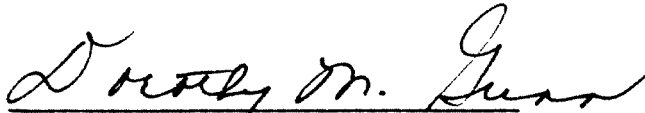
(Source: Added at ___ Ill. Reg. _____,
effective _____)

Section 41 of the Environmental Protection Act, Ill. Rev. Stat. 1985 ch. 111 1/2 par. 1041, provides for appeal of final Orders of the Board within 35 days. The Rules of the Supreme Court of Illinois establish filing requirements.

IT IS SO ORDERED.

J. D. Dumelle concurred.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 21st day of April, 1988, by a vote of 7-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board