

ILLINOIS POLLUTION CONTROL BOARD
November 15, 1989

IBP, INC.,)
)
 Petitioner,)
)
 v.) PCB 88-98
) (Permit Appeal)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

ORDER OF THE BOARD (by B. Forcade):

This matter comes before the Board upon a motion to reconsider filed by the petitioner, IBP Inc. ("IBP"), on October 18, 1989. IBP requests that the Board reconsider its September 13, 1989 Order in this matter which denied IBP's permit appeal. The Illinois Environmental Protection Agency ("Agency") filed a response to IBP's motion for reconsideration on November 1, 1989.

In support of its motion for reconsideration, IBP states that "the record before the Board as submitted by the Agency adequately establishes that the conditions in the permit issued by the Agency are not necessary to accomplish the purposes of the Illinois Environmental Protection Act ("Act") and therefore were imposed unreasonably." However, in addition, IBP makes several arguments relating to the need for higher permit limitations because of certain design and operational aspects of its treatment plant. These latter arguments are inappropriate for a determination of whether certain total residual chlorine and ammonia nitrogen limitations are necessary in IBP's permit to discharge.

In regard to the permit condition establishing the residual chlorine concentration limit, IBP asserts that the Agency strayed from their usual waste load allocation determination process by placing the burden on IBP to "prove that which the existing regulations and Agency procedures presumed." Therefore, IBP argues, that such a "departure from normal procedures is unreasonable and clearly not necessary to accomplish the purpose of the pollution control regulations."

In regard to the permit condition for an ammonia nitrogen load limit, IBP argues that "again the Agency ignored its normal waste load allocation procedures in favor of more restrictive levels unless an IBP conducted mixing zone study was submitted." IBP asserts that the Agency's action is "clearly unreasonable and unnecessary for protection of water quality and exposes IBP to considerable exposure due to the likelihood of non-compliance with this permit condition."

The Agency responds to IBP's motion for reconsideration by requesting that the Board deny IBP's motion. In arguing that IBP's motion for reconsideration should be denied, the Agency states inter alia that IBP has raised no new evidence and no new issues in its motion, and that IBP has not made its burden of proof in demonstrating "a preponderance of the evidence that the limits set by the Agency are more stringent than is necessary to assure compliance."

The Board agrees with the Agency that IBP has not raised any new evidence or new issues in its motion. Nor has IBP asserted that the Board erred in its decision of September 13, 1989 or overlooked facts in the record. IBP has failed to demonstrate that its permit application as submitted to the Agency establishes that the facility will not cause a violation of the Act, absent the contested conditions. IBP's motion for reconsideration is hereby denied.

While not required for today's disposition, the Board makes several observations. First, 35 Ill. Adm. Code 302.102 states that the size of the mixing zones shall be determined based on six criteria, but in no event shall it exceed 25% of the flow of the stream. All of IBP's calculations presume, without justification, the full 25% of stream flow as a mixing zone; any presumptions, therefore, would appear to be on IBP's part. Further, the Board must note that IBP did not contest this same residual chlorine level when it was in the prior permit, and IBP appears to have been generally in compliance with it stating only that it was having "some difficulty" at compliance (Rec., 000060). Finally, IBP's assertion that they have demonstrated, "the resulting residual chlorine level in the stream did not result in instream toxicity" (Motion for Reconsideration, p.2) is without support. IBP conducted no stream sampling, no bioassays, and provided no information whatsoever on the toxicological properties of residual chlorine. Nor has IBP provided calculations to show that absent the contested conditions, IBP's discharge would not violate the ammonia nitrogen water quality standards.

The Board notes that IBP is free to file a new application with the Agency and demonstrate that such conditions are not necessary.

Section 41 of the Environmental Protection Act, Ill. Rev. Stat. 1985, ch. 111 $\frac{1}{2}$, 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

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 15th day of November, 1989, by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board