

ILLINOIS POLLUTION CONTROL BOARD
July 31, 1981

THE FOGELSON COMPANIES, INC.,)
an Illinois Corporation,)
Petitioner,)
) PCB 81-69
)
v.)
)
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,)
)
Respondent.)

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

On April 28, 1981 the Fogelson Companies, Inc. (Fogelson) filed a petition for variance from Rules 402 and 404 of Chapter 3: Water Pollution. An amended petition was filed on May 13, 1981. Hearing was waived. On May 28, 1981 an objection to the variance was filed and in reponse a hearing was scheduled for July 21, 1981. However, only the parties and the objector appeared, and pursuant to an agreement between all present, the objector withdrew his objection and no hearing was actually held. Although the Board is reluctant to allow the cancellation of hearings for which notice has gone to the public through the Environmental Register, in this case since the objector agreed and no one else appeared, there appears to have been no prejudice to anyone. Therefore, the Board can properly reach a decision on the pleadings and the Environmental Protection Agency's (Agency) amended recommendation which was filed on July 22, 1981, recommending that variance be granted subject to certain conditions.

Fogelson owns a sewage treatment plant (STP) located in Lake County near Buckley and St. Mary's Roads. The STP receives domestic waste from 130 single family homes, ninety of which are located in the Terre Fair Development in unincorporated Lake County and forty of which are located in Saddle Hill Subdivision in the Village of Green Oaks.

The STP, located in East-Central Lake County is a contact stabilization package plant with a design average flow of 0.035 million gallons per day which discharges into the Des Plaines River. Its prior NPDES Permit No. IL0045853, which expired on December 31, 1978 allowed effluent biochemical oxygen demand (BOD₅) and suspended solids (SS) concentrations of 30 mg/l.

The STP is within that area of northeastern Illinois encompassed by the areawide wastewater treatment management plan developed by the Northeastern Illinois Planning Commission (NIPC) pursuant to Section 208 of the Federal Water Pollution Control Act.

Fogelson requests variance from Rules 402 and 404 to enable it to continue discharging from its STP at its prior NPDES permit concentration levels for deoxygenating wastes.

The relief requested here is similar to that requested in Bloomington v. EPA, (PCB 78-124, 32 PCB 23, November 2, 1978), and the Board's reasoning in that case applies here. In Bloomington nearly 300 dischargers to the Des Plaines and Du Page Rivers were joined in a variance proceeding regarding depressed dissolved oxygen (DO) levels in those rivers. Demonstrations of non-contribution to violations of DO by all dischargers was held to be an arbitrary and unreasonable hardship.

However, there have been some problems with the STP operation, resulting in complaints of noise, odors, and overflows. The Agency indicates in its recommendation that these problems appear to result from operation and maintenance lapses. The Agency has determined that the STP has only one blower rather than the required two and the existing blower is in poor condition. Further, the Agency notes that the fence surrounding the STP is inadequately maintained. For this reason, a variance grant must be conditioned upon remedying these problems.

Discharge Monitoring Reports for 1980 indicate that the STP has only twice violated NPDES permit limitations with respect to BOD₅ and SS. The Board must assume, since neither the petition nor the recommendation indicate the dilution ratio, that the 30/30 NPDES limitations reflect Board regulations applicable to the STP. This being the case, variance from Rule 404 appears to be unnecessary. However, since Fogelson mischaracterizes Rule 404, the Board notes that Rule 402, rather than Rule 404, prohibits effluent contributions to DO depressions "below the present water quality standards." Thus, variance from Rule 404 is denied as unnecessary.

However in order for Fogelson to obtain its requested relief, variance from Rule 203(d) relating to violation of water quality standards for DO must be granted.

The Board finds that the discharge flow here is small and that the effluent quality has been generally good. The Board further finds that there will be little or no adverse environmental impact. Given the eventual planned abandonment of the STP and diversion of flows to the Libertyville STP, the obvious similarity to Bloomington, and the impossibility of connections at this time to the Southeast Central Interceptor Sewer, the Board finds that denial of variance from Rules 203(d) and 402 would constitute an arbitrary and unreasonable hardship, provided that certain conditions are met to assure the proper operation, maintenance and protection of the plant.

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

ORDER

1. The Fogelson Company, Inc. is hereby granted variance from Rules 203(d) and 402 of Chapter 3: Water Pollution, as they apply to dissolved oxygen, subject to following conditions:

a. This variance shall expire on October 19, 1983 or upon diversion of all flows to the LCDPW Southeast Central Interceptor Sewer tributary to the Libertyville STP, whichever occurs first;

b. Whenever the interceptor sewer becomes available, Fogelson shall connect to it and abandon the Terre Fair STP as soon as practicable;

c. Fogelson shall obtain all necessary permits for expanding its Terre Fair STP.

d. Fogelson shall assure that the Terre Fair STP is at all times fully equipped as required by applicable Agency permits; to this end, Fogelson shall immediately begin steps to acquire and install a replacement backup blower and shall assure that the backup blower is operational and in use at the earliest possible moment, but in no case later than August 30, 1981, unless Fogelson has demonstrated to the Agency satisfaction by August 15, 1981, that a specific later date is the earliest possible date on which the blower can be put in use. Once the backup blower is on line, the other blower will be taken off line and expeditiously repaired or replaced. At no time after the expiration of 45 days following installation of the backup blower will Fogelson allow the STP to operate without a backup blower installed and operational.

e. Fogelson shall expeditiously prepare and submit to the Agency a plan to achieve adequate operation and security for the STP. Such plan shall require as a minimum, the installation of a fence of sufficient height, strength and length to discourage vandalism and theft. In addition, the plan shall address the use of Lake County Public Works Department personnel, the efficacy and cost of alarm systems and the use of local and county law enforcement officers to assure proper operation and protection of the STP.

2. The IEPA is hereby authorized to reissue an NPDES Permit to Fogelson consistent with the Board's Order and including the requirement that Fogelson's STP shall be operated using the best practicable operation and maintenance practices.

3. Fogelson's request for variance from Chapter 3, Rule 404 is hereby denied as unnecessary.

4. Within 45 days after the date of this Order Fogelson shall execute and forward to the Illinois Environmental Protection Agency, Water Pollution Control Variance Section, 2200 Churchill Road, Springfield, Illinois 62706 a Certification of Acceptance and Agreement to be bound to all terms and conditions of the variance. This 45 day period shall be held in abeyance for any period during which this matter is being appealed. The form of said Certification shall be as follows:

CERTIFICATION

I, (We), _____, having read the Order of the Illinois Pollution Control Board in PCB 81-69 dated _____, understand and accept the said conditions thereto binding and enforceable.

Petitioner


By: Authorized Agent

Title

Date

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 31st day of July, 1981 by a vote of 3-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board