

ILLINOIS POLLUTION CONTROL BOARD
June 20, 1986

OASIS OUTDOOR, LTD.,)
)
 Petitioner,)
)
 v.) PCB 85-126
)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

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

This matter comes before the Board upon an October 24, 1985 Amended Petition for Variance filed on behalf of Oasis Outdoor, LTD. (Oasis). Oasis requests a one-year variance from the Board's effluent standards for five-day biochemical oxygen demand (BOD₅), total suspended solids (TSS), fecal coliform and ammonia nitrogen (35 Ill. Adm. Code 304.120, 304.124, 304.121 and 304.122, respectively). The purpose of the variance is to allow Oasis time to prepare plans and specifications, solicit bids and complete construction of its sewage treatment plant (STP) upgrade. (Amend Pet. pp. 1-3). The Illinois Environmental Protection Agency (Agency) filed its recommendation that the variance be denied on April 2, 1986.

Oasis operates a STP with a design average flow of 150,000 gallons per day which services a mobile home park with a population of approximately 2,000 residents in DesPlaines, Illinois. The STP discharges to Higgins Creek pursuant to an NPDES permit containing effluent limits of 10 mg/l BOD₅, 12 mg/l TSS, 400/100 ml fecal coliform and 1.5 mg/l ammonia nitrogen. According to Oasis's discharge monitoring reports, these effluent limits have been exceeded on several occasions over the last three years. (Rec. Exh. 1). These exceedances are primarily due to hydraulic overload and plant design problems. (Amend. Pet. p. 2).

Oasis seeks variance from 35 Ill. Adm. Code 304.120, 304.121, 304.122 and 304.124 for a period of one-year to allow Oasis time to complete its STP upgrade. The burden is on Oasis to prove that denying variance would impose an arbitrary or unreasonable hardship on it. When determining whether an arbitrary or unreasonable hardship exists, the Board takes into consideration any environmental harm. For the following reasons, the Board finds that Oasis has failed to establish an arbitrary

or unreasonable hardship and, therefore, denies Oasis' variance request.

Environmental Impact

Oasis asserts that there is no significant risk of environmental harm or risk to public health if the Board grants Oasis variance. However, Oasis offers no data to support this assertion. The Agency contends that while it has no recent water quality data on Higgins Creek, Oasis fails to prove that the environmental impact of granting this variance would be minimal. The Board agrees. Oasis offers no evidence which would enable the Board to find that the environmental impact of granting this variance is minimal. In fact, Oasis's discharge monitoring reports indicate otherwise, with elevated levels of BOD₅, TSS, fecal coliform and ammonia nitrogen occurring in its STP's effluent on several occasions. The only proof offered by Oasis is the assertion that there is no significant risk of environmental harm in granting variance. Without more, the Board cannot find that the environmental impact of granting variance would be minimal.

Hardship

Oasis offers the following as evidence of diligence in seeking compliance with its effluent limitations; that it sought permission to connect into the Metropolitan Sanitary District of Greater Chicago's sewer system which was denied, and that in 1980 and 1981 Oasis made improvements in its sewer system and constructed a storm water retention tank. The Agency asserts that these efforts at compliance have only been partially successful and that the stormwater retention tank has been out of service since mid-1984 and, as of December, 1985, remains out of service despite Oasis's agreement to place the tank back into service. (Rec. p. 2). Also, the Agency contends that it has attempted to urge Oasis to achieve compliance with its effluent limitation and has gone so far as to conduct a compliance sampling inspection and hold a pre-enforcement conference in February, 1985. (Rec. Exh. 4). Oasis agreed to make improvements but has failed to devise an acceptable plan which would ensure compliance.

The Board notes that as early as 1980, Oasis has been aware of hydraulic overloading problems at its STP. The 1980 and 1981 improvements were partially successful but there was need for additional action. Oasis's compliance plan is to upgrade its STP, minimize violations and continue in its efforts to determine why excess water infiltrates its sewer system during heavy rain storms. The Board is at a loss to understand why Oasis has taken so long to rectify the problems with its STP. Oasis has not demonstrated diligence in seeking compliance with its NPDES

effluent limitations and, therefore, any hardship experienced by denying this variance would be largely self-imposed.

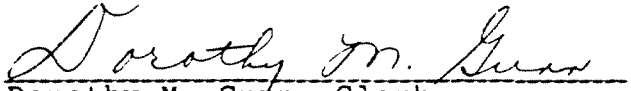
This Opinion constitutes the Board's findings of fact and conclusions of law in this matter.

ORDER

Oasis Outdoor, LTD. of DesPlaines, Illinois is hereby denied variance from 35 Ill. Adm. Code 304.120, 304.121, 304.122 and 304.124.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 20th day of June, 1986 by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board