

ILLINOIS POLLUTION CONTROL BOARD
June 22, 1978

VILLAGE OF SAUGET,)
)
) Petitioner,)
)
) v.) PCB 77-136
)
 ENVIRONMENTAL PROTECTION AGENCY,)
)
) Respondent.)

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

This matter is before the Board on a petition filed May 20, 1977 by the Village of Sauget (Sauget) for a variance from Rules 404(b)(i), 408, 409(a), 901 and 902(j)(5) of Chapter 3 of the Regulations. The Agency's motion to dismiss was granted with respect to Rules 901 and 902(j)(5) on June 28, 1977. An amended recommendation was filed by the Agency July 19, 1977. The parties have agreed to a stipulation of facts filed May 24, 1978.

The subject of the petition is the physical chemical waste treatment facility operated by Petitioner on the Mississippi River since April, 1977. A treatment process consisting of solids removal, neutralization, flocculation, clarification and oil skimming is applied to an average influent of 11.5 million gallons/day from nine industries and approximately 200 residential customers. The chemical treatment plant is a substantial improvement over the primary treatment system utilized between 1967 and 1977. Nevertheless, it is insufficient to meet the effluent standards for BOD, suspended solids, oil and grease, phenols and mercury in Chapter 3 of the Regulations.

Consistent with the recommendation of the Southwestern Illinois Metropolitan Planning Commission (SWIMPC), Sauget is preparing to construct a regional biological waste treatment facility by 1983 which will meet all effluent standards except the one for mercury. In October, 1977, Petitioner submitted a step II grant application for such a facility, pursuant to an

intergovernmental agreement negotiated with East St. Louis, Cahokia, the Cahokia Commonwealth Public Water District and Metro East Sanitary District. During the interim period, Petitioner seeks a variance from the effluent standards for BOD (Rule 404(b)(i), suspended solids and oil (Rule 408), and phenols and mercury (Rule 409(a)).

The Agency recommends granting a five year variance for oil while imposing an interim standard of 58 mg/l, a five-year variance for phenols with an interim standard of 19 mg/l, and a one year variance for mercury with an interim standard of .005 mg/l. With respect to Rule 404(b)(i), the Agency correctly points out that effluent standards therein apply to Petitioner's discharge of suspended solids as well as BOD. The recommendation is for denial of a variance for both of these on the grounds that such a variance is precluded by the Clean Water Act (CWA) and regulations thereunder which set minimum effluent standards. The Agency states that Petitioner must first receive an extension of the 1977 treatment deadline under CWA section 301(i) from U.S. EPA.

The Board agrees with the Agency that variance relief is appropriate in this case for oil, phenols and mercury. Despite the recently commenced operation of a physical chemical treatment plant, Sauget is still in violation of the effluent standards for these pollutants. Sauget is currently engaged in plans for construction of a regional biological treatment plant which will meet all effluent standards except those for mercury. The mercury effluent standard is currently the subject of two proposed rule changes (R76-17 and R76-21) and the major industrial discharger of mercury (Monsanto) is engaged in a variance proceeding (PCB 75-318). In light of these factors, compliance at the present time would be arbitrary and unreasonable.

With regard to the requested variance for BOD and Suspended Solids, the Board notes that Section 35 of the Act requires variances to be consistent with the Clean Water Act (CWA). The Federal secondary treatment standard applicable to Sauget [CWA Section 301(b)(1)(B)] is defined as an effluent limitation of 30 mg/l for BOD and Suspended Solids (40 C.F.R. §133). The Board has previously held that CWA §510(1)(B) prohibits enforcement of standards less stringent than these. See City of Springfield v. EPA, PCB 77-185. Applying the rule in City of Springfield, Sauget would be required to obtain an extension of the 1977 secondary treatment deadline from U.S. EPA pursuant to CWA §301(i) before the Board could grant a variance.

Nevertheless, U.S. EPA has recently promulgated an interim Final Rule which establishes criteria for incorporation of a

CWA §301(i) deadline extension into the Illinois NPDES permit procedure. See 43 Fed. Reg. 21266 et seq. (May 16, 1978). Under the new regulation the Board can extend the Federal compliance deadline to a petitioner who applies for a Sec. 301(i) extension by incorporating the terms and conditions of a variance into a state-issued NPDES permit.

In order to qualify for the variance, Sauget must make a request to Illinois EPA for the issuance or modification of its NPDES permit before June 26, 1978, and demonstrate that it meets the criteria in 40 C.F.R. §124.103.

The Board finds that Sauget has satisfied the criteria established in 40 C.F.R. §124.103(b). Sauget has pursued Federal financial assistance which will not be available in time to complete construction by the July 1, 1977 deadline for secondary treatment. Sauget has demonstrated its good faith by pursuing regionalization and has not contributed in any significant way to the delay in achieving this goal.

The Board will direct the Agency to issue an NPDES permit to Petitioner consistent with this Order and 40 C.F.R. §124.104 pursuant to Rule 914 of Chapter 3 and to include interim effluent limitations as may reasonably be achieved.

This opinion constitutes the findings of fact and conclusions of law of the Board in this matter.

ORDER

It is the Order of the Pollution Control Board that:

1. The Village of Sauget be granted a variance from Rule 408(a) of Chapter 3 of the Board's Regulations, pertaining to mercury, until July 1, 1979, subject to the following conditions:
 - (a) Sauget's mercury effluent discharge shall not exceed a monthly average of 0.005 mg/l.
 - (b) Sauget shall conduct an inventory on discharge of mercury into its sewage system, provide data on daily discharges from each source and describe all current efforts to control such discharges.

- (c) The variance for mercury shall sooner terminate upon modification of mercury effluent standards resulting from final action by the Board in R76-17 and R76-21.
2. The Village of Sauget be granted a variance from Rules 408 and 409(a) of Chapter 3 of the Board's Regulations pertaining to oil and phenols, until July 1, 1983, under the following conditions:
- (a) Sauget's oil effluent discharge shall not exceed a monthly average of 58 mg/l.
 - (b) Sauget's phenol effluent discharge shall not exceed a monthly average of 19 mg/l.
 - (c) The variance for phenols shall sooner terminate upon promulgation of appropriate Federal BAT standards for phenols under the Clean Water Act of 1977.
 - (d) Sauget shall proceed expeditiously with construction of a regional biological waste treatment plant.
 - (e) The variance for oil and phenols shall sooner terminate upon diversion of Sauget's wastewater flow to a regional biological treatment plant.
3. The Village of Sauget be granted a variance from Rule 404(b)(i) of Chapter 3 of the Board's Regulations pertaining to BOD and Suspended Solids until July 1, 1983 subject to the following conditions:
- (a) Sauget's BOD effluent discharge shall not exceed a monthly average of 332 mg/l.
 - (b) Sauget's Total Suspended Solids effluent discharge shall not exceed a monthly average of 120 mg/l.
 - (c) Sauget shall proceed expeditiously with construction of a regional biological waste treatment plant, following the timetable in the Stipulation of Facts p. 23 which is incorporated by reference as if fully set out herein.

- (d) Petitioner shall request the Agency, before June 26, 1978, to issue or modify its NPDES permit to incorporate all conditions of the variance set forth herein, including but not limited to:
- (1) Compliance with the timetable referred to in Condition (6).
 - (2) Compliance with sections 201(b) through (g) of the C.W.A. consistent with the terms of Sauget's construction grant.
 - (3) Issuance of quarterly progress reports indicating the measures undertaken to insure maximum operation and maintenance of existing treatment facilities for the duration of the variance.
 - (4) Compliance with all applicable pretreatment regulations promulgated pursuant to C.W.A. Section 307(b) in 40 C.F.R. Pt. 403, or if no such regulations have been promulgated, compliance with the pretreatment regulations in 40 C.F.R. Pt. 128.
4. The Agency, pursuant to Rule 914 of Chapter 3, shall issue or modify Sauget's NPDES permit consistent with the conditions set forth in this Order including appropriate monitoring requirements and such interim effluent limitations as may reasonably be achieved.
5. Within 45 days after the date of the date of this Order, the Petitioner shall submit to the Manager, Variance Section, Division of Water Pollution Control, Illinois Environmental Protection Agency, 2200 Churchill Road, Springfield, Illinois 62706 an executed Certification of Acceptance and Agreement to be bound to all terms and conditions of the variance. The forty-five day period herein shall be suspended in the event of judicial review of this variance pursuant to Section 41 of the Environmental Protection Act. The form of said certification shall be as follows:

CERTIFICATION

I (We), _____ having read the Order of the Pollution Control Board in PCB 77-136, understand and accept said Order, realizing that such acceptance renders all terms and conditions thereto binding and enforceable.

SIGNED

TITLE

DATE

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 22ND day of June, 1978 by a vote of 5-0.

Christan L. Moffett
Christan L. Moffett, Clerk
Illinois Pollution Control Board