

ILLINOIS POLLUTION CONTROL BOARD  
June 12, 1980

DEPARTMENT OF ENERGY, )  
 )  
 ) Petitioner )  
 )  
 ) v. ) PCB 80-61  
 )  
 ENVIRONMENTAL PROTECTION AGENCY, )  
 )  
 ) Respondent. )

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

On April 7, 1980, the Department of Energy (DOE) filed a petition for variance from certain portions of Board rules and regulations Chapter 3: Water Pollution (Chapter 3). On May 9, 1980, the Environmental Protection Agency (Agency) filed its Recommendation in support of this petition. Hearing was waived in this matter, and none was held.

The DOE seeks this variance on behalf of a wastewater treatment plant which it operates to serve the Argonne National Laboratory in DuPage County. Specifically, DOE requests relief from Rules 203(d), 402 and 962(a) as they relate to dissolved oxygen, Rule 404(f) as it relates to BOD<sub>5</sub> and Suspended Solids, Rule 902(i)(1) as it applies to NPDES Permit renewal prerequisites, and Rules 910(a)(4) and 910(b) as they apply to terms and conditions of NPDES permits. This petition for variance was prompted by the response of the Agency to DOE's request for renewal of its then-current NPDES permit, due to expire May 10, 1980.

By letter of March 6, 1980 (attached to the petition as Exhibit B), the Agency advised DOE that action on its permit application would be withheld pending receipt of a variance from the above listed rules. (Ex. B, p.3). The Agency then noted that relief of the sort needed by DOE had been sought by the Agency for some 280 area dischargers (Ex. B, p. 2). This variance relief had been granted by the Board in Village of Bloomingdale v. E.P.A., PCB 78-124, 31 PCB 34-121 (Order, October 19, 1978), 32 PCB 32-23 (Opinion, November 2, 1978); "[u]nfortunately, the subject facility was among the few existing dischargers that were inadvertently omitted from the list of joined parties...." (Ex. B, p. 2).

In its petition, DOE requests that the record in Bloomingdale, supra, be incorporated into the record in this proceeding. DOE argues that to hold it to the 4 mg/l BOD<sub>5</sub> and 5 mg/l suspended solids requirements of Rule 404(f), and the dissolved oxygen standards of Rules 203(d), 402, and 962(a), would create an

arbitrary and unreasonable hardship, as it would necessitate a plant shutdown and closing of Argonne during likely unsuccessful attempts to upgrade treatment facilities (Pet. p. 7). DOE further argues that it would be unreasonable for the Board to refuse to grant it the same relief granted to operators who were fortunate enough to be joined in Bloomingtondale.

The Agency recommendations of May 9 in support of the petition apprised the Board of essentially the same facts as were contained in the petition and its exhibits. The Agency was also verified that DOE had met the 10 mg/l BOD<sub>5</sub> and 12 mg/l Suspended Solids limits of its recent permit. The Agency stated that this permit condition could not be renewed because of the 4/5 limitation contained in Rule 404(f).

The Agency noted that it believed its proposed amendment to the Rule, R77-12, Docket C, was still pending before the Board. However, a final order of the Board was entered in R77-12, Docket C, on May 1, 1980, deleting Rule 404(f) from Chapter 3. This rule change was filed with the Secretary of State on May 7, and the deletion became effective on that date. Accordingly, variance relief as to BOD<sub>5</sub> and suspended solids levels is unnecessary.

The Board has not previously and does not now accept the argument that denial of variance is the equivalent of a "shutdown order"; the variance petitioner is liable to an enforcement action absent relief, but nonetheless remains able to continue operations. The Board does agree that petitioner DOE should have been one of the parties joined in the original Bloomingtondale proceeding, and finds that denial of variance from dissolved oxygen requirements would impose an arbitrary and unreasonable hardship on petitioner DOE. Accordingly, a variance similar to that ordered in Bloomingtondale, as described in the attached order, is granted. Variance relief from Rules 901 et. seq. of Chapter 3, which deal with Agency procedures, need not be granted to petitioner.

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

#### ORDER

It is the Order of the Pollution Control Board that:

1) The Petitioner, the Department of Energy, is granted a variance from Chapter 3: Water Pollution Rules 203(d) and 402 as they apply to dissolved oxygen, until October 19, 1983;

2) The Petitioner's request for a variance from Rule 404(f), 902(a)(1), 910(a)(4), 910(b) and 962(a) is dismissed.

3) Petitioner shall operate and maintain its wastewater treatment plant so as to minimize violations of the dissolved oxygen standards.

4) The Agency, pursuant to Rule 914 of Chapter 3, shall reissue an NPDES permit to Petitioner consistent with this Order including such effluent limitations as may reasonably be achieved through application of best practicable operation and maintenance practices in petitioner's facilities.

5) Within 45 days of the date of this Order, the Department of Energy shall execute and forward to the Illinois Environmental Protection Agency, Division of Water Pollution Control, Variance Unit, 2200 Churchill Road, Springfield, IL 62706, an executed Certification of Acceptance and Agreement to be bound by all conditions of the variance. The forty-five day period herein shall be stayed during 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 Illinois Pollution Control Board in PCB 80-61 dated \_\_\_\_\_, understand and accept the said Order, realizing that such acceptance renders all terms and conditions thereto binding and enforceable.

\_\_\_\_\_  
Petitioner  
By: \_\_\_\_\_  
Authorized Agent  
TITLE \_\_\_\_\_  
DATE \_\_\_\_\_

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order were adopted on the 12<sup>th</sup> day of June, 1980, by a vote of 5-0.

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