ILLINOIS POLLUTION CONTROL BOARD
October 30, 1975

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| ENVIRONMENTAL PROTECTION AGENCY,<br><br>Complainant,<br><br>v.<br><br>SPINNEY RUN FARMS,<br><br>Respondent. | ) | PCB 74-213 |
| SPINNEY RUN FARMS,<br><br>Petitioner,<br><br>v.<br><br>ENVIRONMENTAL PROTECTION AGENCY,<br><br>Respondent. | ) | PCB 74-347 |

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

This case returns to the Board upon remand of the Appellate Court, Second District, for a determination on its merits of a Joint Motion for Reconsideration of the parties. The Motion, together with a Stipulation, was originally filed with the Board on July 10, 1975. On July 24, 1975 we held that we no longer had jurisdiction to consider such a motion, since an appeal of these cases was pending before the Court. The present remand now cures this jurisdictional defect. For reasons noted below we deny the Joint Motion on its merits.

The Board Order in PCB 74-347 (April 10, 1975) granted Spinney Run Farms variance from certain rules of the Water Pollution Regulations, subject to construction of a waste water pretreatment facility which Spinney Run Farms indicated would be completed by December, 1975. The Board had granted an earlier variance, subject to the same condition, in PCB 72-185, PCB 72-327 (July 12, 1973). In the earlier case

Spinney Run Farms had originally indicated the pretreatment facility would be completed by December 31, 1972. In both instances the Board relied upon a description of the facility to be built found in Respondent's Exhibit No. 16 in PCB 74-213. As we pointed out in our May 8, 1975 Opinion, the record in the instant case revealed an intention to construct substantially the very same facility as that planned in the earlier case (PCB 74-213 transcript, p. 305-311; PCB 74-347 transcript, p. 105).

The Stipulation contained in the Motion for Reconsideration now proposes a different pretreatment facility and a revision of the plans submitted as Respondent's Exhibit No. 16 to conform to the new facility. We must reject this aspect of the Stipulation for, regardless of the relative merits of the two schemes, the Board has heard no testimony nor received any evidence regarding the facility now proposed. On the sole basis of the description in the Stipulation we cannot determine whether it would be as desirable as the earlier plan, or even whether it would be adequate to reduce pollution to acceptable levels. As a practical matter, the procedural posture in which this Motion has come forward is both highly unusual and undesirable. Both parties had ample opportunity to reach a settlement prior to our resolution of this case. In fact, the record indicates that the Environmental Protection Agency resolutely opposed the granting of the variance throughout the lengthy course of the proceeding. No explanation has been made for the Agency's sudden reversal. For dissatisfied parties to now come forward to propose a settlement after a final decision has been made and without substantial new evidence is not only a misuse of the administrative-adjudicative process but also an intolerable burden upon the resources of this Board. Further, to accept stipulated settlements subsequent to the rendering of Opinions could have the adverse effect of precluding all settlements prior to decision, since both parties would be encouraged to await the Opinion on the chance that it may be more favorable than a settlement would be. In any event, there is nothing in the instant Stipulation which indicates that the compliance plan, as originally ordered, should be changed.

Two other aspects of the Stipulation contained in the Motion to Reconsider must be rejected on their merits. First, paragraph 12 of the Stipulation calls for temporary effluent limits, during the course of the variance, not to exceed 30-day averages of 300 mg/l for $BOD_5$ and 100 mg/l for suspended solids. Our Order called for limits of 150 and 80 mg/l, respectively. These limits were based on the testimony

of Spinney Run Farm's own treatment plant operator, who indicated that those were the upper limits of the current average loading at the plant (PCB 74-213 transcript, p. 276). There is nothing in the present Stipulation which indicates that these limits need be revised. Also, paragraph 13 of the Stipulation calls for effluent limits of 100 mg/l for $BOD_5$ and 70 mg/l for suspended solids for the period between completion of the pre-treatment facility and by-pass of the effluent to the Gurnee treatment plant. As we noted in our Supplemental Opinion of May 22, 1975, maximum effluent standards for such a period could be adjusted based upon the filing of a new variance petition (if needed) at that time.

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 the Joint Motion for Reconsideration be, and hereby is, denied.

Mr. Young abstains.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 30th day of October, 1975 by a vote of 3-0.

Christan L. Moffett

Christan L. Moffett, Clerk
Illinois Pollution Control Board