

ILLINOIS POLLUTION CONTROL BOARD  
May 24, 1979

BALMORAL RACING CLUB, INC. )  
 )  
 ) Petitioner, )  
 ) )  
 ) v. ) PCB 79-45  
 ) )  
 ENVIRONMENTAL PROTECTION AGENCY, )  
 ) )  
 ) Respondent. )

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

Petitioner has requested a variance from Rules 404(f) and 402 (as it pertains to dissolved oxygen) of Chapter 3: Water Pollution. The Agency has recommended that a variance be granted. No hearing was held.

Petitioner applied for a NPDES permit to discharge treated domestic sewage from its race track in Will County. The Agency indicated that it can not issue the permit because the discharge may cause or contribute to downstream violations of applicable dissolved oxygen water quality standards. This conclusion was based on a computer model prepared by the Northeastern Illinois Planning Commission (NIPC) and submitted as part of NIPC's water quality management plan prepared pursuant to Section 208 of the Clean Water Act. This model was the subject of a prior Board variance which granted similar relief to over 250 dischargers (Village of Bloomingdale v. EPA, PCB 78-124, October 19, 1978, 31 PCB 125, November 2, 1978, and November 30, 1978). In Bloomingdale, the Board commented as follows on the use of this model:

"The Board finds that it need not determine whether or not the model's predictions are accurate. By its very existence the NIPC study provides evidence of possible present and future violations of the Board's dissolved oxygen water quality standard. While the model does not provide conclusive proof that any individual discharge will cause or contribute to violations, the Board sees no reason why the model's conclusions should be challenged in a series of permit denial appeals or obviated in a series of variances. Extensive litigation would constitute economic hardship on hundreds of dischargers and would impose an administrative burden on the Agency. This hardship is rendered arbitrary or unreasonable by

virtue of the fact that it may be needless. Pending regulatory changes may remove the need for some of this litigation."

The Board hereby incorporates the record and its findings and conclusions in Bloomingtondale in the record of this matter.

Petitioner has indicated that it can meet the 10 mg/l BOD and 12 mg/l suspended solids effluent limitations which were applied to the majority of dischargers in Bloomingtondale.

Without a variance Petitioner's only alternative is termination of its discharge or construction of additional treatment facilities to eliminate all deoxygenating wastes. Petitioner contends that the hardship and expense associated with this alternative far outweighs any environmental improvement which would result.

The Board concludes that denial of this variance would constitute arbitrary or unreasonable hardship on Petitioner. The reasoning in Bloomingtondale must be employed in this matter to avoid inequitable results. Relief will also be granted from Rules 910(a)(4) and 910(b) so that the Agency may issue a NPDES permit to Petitioner.

On May 21, 1979 the Board received an objection to the granting of this variance by Mr. Merlin Karlock. Mr. Karlock felt that no relief should be granted until certain easement rights had been litigated in a pending circuit court action. Since this objection is not timely under Section 37 of the Act or Procedural Rule 404 a hearing need not be held. Since the objection deals with a matter which is apparently unrelated to the Board's concerns in this matter, no hearing will be scheduled.

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

#### ORDER

- 1) Petitioner is hereby granted a variance from Rules 203(d), 402 (as it pertains to dissolved oxygen), 910(a)(4) and 910(b) of Chapter 3: Water Pollution, until October 19, 1983.
- 2) Petitioner is hereby granted a variance from Rule 404(f) of Chapter 3: Water Pollution until October 19, 1983 or until the Board takes final action in R77-12, Docket C, whichever occurs first.

- 3) During the term of this variance the discharge of treated sewage from Petitioner's sewage treatment facility shall be limited to 10 mg/l BOD and 12 mg/l suspended solids as 30 day averages.
- 4) The Agency is hereby authorized to issue a NPDES permit to Petitioner in a manner consistent with the terms of this Order including terms and conditions consistent with best practicable treatment, operation and maintenance of Petitioner's facilities.
- 5) Within 45 days of the date of this Order, Petitioner shall execute a Certification of acceptance and agreement to be bound by all the terms and conditions of this variance. The Certification shall be forwarded to the Illinois Environmental Protection Agency, Division of Water Pollution Control, Variance Section, 2200 Churchill Road, Springfield, Illinois 62706. This 45 day period shall be held in abeyance if this matter is appealed. The form of the Certification shall read as follows:

CERTIFICATION

I (We), \_\_\_\_\_, having read and fully understanding the Order in PCB 79-45 hereby accept that Order and agree to be bound by all of its terms and conditions.

SIGNED \_\_\_\_\_

TITLE \_\_\_\_\_

DATE \_\_\_\_\_

IT IS SO ORDERED.

Dr. Satchell abstains.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 24<sup>th</sup> day of May, 1979 by a vote of 4-0.

  
 Christan L. Moffett, Clerk  
 Illinois Pollution Control Board