

ILLINOIS POLLUTION CONTROL BOARD  
November 2, 1978

VILLAGE OF BLOOMINGDALE, )  
 )  
 ) Petitioner, )  
 )  
 ) v. ) PCB 78-124  
 )  
 ) ENVIRONMENTAL PROTECTION AGENCY, )  
 )  
 ) Respondent. )

OPINION OF THE BOARD (by Mr. Dumelle):

The Village of Bloomingdale (Bloomingdale) requested a variance from Rule 203(d), Rule 203(f) as it pertains to ammonia nitrogen, Rule 402 as it pertains to dissolved oxygen and ammonia nitrogen, Rule 404(f) and Rule 962(a) of Chapter 3: Water Pollution of the Board's Rules and Regulations. On motion of the Agency, 287 additional dischargers were joined as parties in this matter. A hearing was held on October 13, 1978 in the Civic Center in the Village of Glendale Heights.

Bloomingdale is seeking this relief in order to obtain a permit to construct an interim expansion of its sewage treatment facilities. The expansion will produce an effluent of 10 mg/l BOD and 12 mg/l suspended solids (10/12). Normally this level would be acceptable and no variance would be necessary if Bloomingdale made a demonstration under Rule 404(f)(ii) of Chapter 3. The Agency advised Bloomingdale that such a demonstration could not be made because of a study undertaken by the Northeastern Illinois Planning Commission (NIPC). The NIPC study is a model which predicts violations of the Board's Water Quality Standards for dissolved oxygen throughout the six county Chicago metropolitan area.

The Agency asked that all point source dischargers in the six county area be joined in this matter because of the NIPC study. The Agency contends that this study prohibits the issuance of any permit which provides for a discharge in excess of 4 mg/l BOD and 5 mg/l suspended solids (4/5) without extensive proof from each discharger in the six county area that no violation of water quality standards will occur. The Agency feels that this proof would be very costly and would serve no useful purpose. This feeling is based in part on the fact that the 4/5 standard is presently under review in a regulatory proceeding (R77-12, Docket C). If the Board adopts the Agency's proposal in R77-12, the 4/5 standard would be eliminated. The NIPC study is being completed as a part of a review of water quality management under

Section 208 of the Clean Water Act. Once that review is complete, a comprehensive plan will be developed which will cover all point and non-point sources of water pollution in the six county area. As a part of this plan, an implementation schedule will be prescribed to bring all sources into compliance with its provisions. Rule 902(j)(4) provides that the Agency may not issue any NPDES permit which authorizes a discharge in conflict with a plan approved under Section 208 of the Clean Water Act. Consequently the Agency feels that it would be inappropriate to require all the dischargers in the six county area to provide proof that their discharges do not cause or contribute to violations of the Board's Water Quality Standards when regulatory relief may render the proof unnecessary or the Section 208 planning process may supersede present standards.

The NIPC study is a model which employs the techniques of computer simulation to predict the impact of various alternate strategies for water pollution control. At the hearing the Metropolitan Sanitary District of Greater Chicago (MSD), one of the joined parties, challenged the accuracy of the model's predictions. The MSD claimed that the model had not been sufficiently calibrated or verified. While the MSD supported the grant of a variance to all dischargers in the six county area, it felt that this position was adequately supported by actual field data and that use of the model in this instance was unnecessary and unwarranted. 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.

In its Recommendation, the Agency claimed that Bloomingdale had not demonstrated adequate hardship in being required to meet the ammonia nitrogen standards in Rule 402.1 of Chapter 3. At the hearing, Bloomingdale withdrew its request for relief from the ammonia nitrogen standards. Consequently relief from the ammonia nitrogen standards is denied.

Two of the joined parties testified at the hearing that they were presently discharging at levels in excess of the 10/12 standard pursuant to variances. In its Recommendation the Agency asks that any joined party whose discharge is not covered by Rule 404(f) be allowed to continue discharging at currently permitted levels. Each of these dischargers would then be subject to a case-

by-case review at the time its NPDES permit is reissued. The Board agrees that its decision in this matter should not have any effect on existing variances. The Agency's proposed method of handling discharges not covered by Rule 404(f) is acceptable with the following conditions. During the term of this variance no discharge shall be set at a level more stringent than the 10/12 standard, and no party is forfeiting any right to seek review of an Agency decision through the procedures established in the Board's regulations.

All dischargers affected by the Board's decision in R77-12, Docket C shall be required to comply with that decision.

The Agency has recommended that Bloomingdale and each joined party be required to execute a Certification of Acceptance and Agreement to be bound by the terms of this variance. Since no conditions are being attached to the grant of this variance, the Board finds that no purpose would be served by such a Certification and none will be required.

The relief granted in this proceeding is unusual. The Board's decision to acquiesce in this procedure should not be construed as a recommendation that this practice be followed in the future. The facts here called for a broad response to a particular set of circumstances. Whenever possible the Board's rulemaking procedures should be followed to cover classes of dischargers.

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

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion was adopted on the 2<sup>nd</sup> day of November, 1978 by a vote of 4-0.

  
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Christan L. Moffett, Clerk  
Illinois Pollution Control Board