

ILLINOIS POLLUTION CONTROL BOARD
July 6, 1978

DIX-KELL WATER & SEWER COMMISSION,)
)
Petitioner,)
)
v.) PCB 78-141
)
ENVIRONMENTAL PROTECTION AGENCY,)
)
Respondent.)

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

This matter comes before the Board on a Petition filed on May 11, 1978, by the Dix-Kell Water & Sewer Commission (Dix-Kell) for a variance from the phosphorus limitations of Sections 203(c), 402 and 404(f) of Chapter 3: Water Pollution Regulations, of the Board's Rules and Regulations. On June 7, 1978, an Amended Petition was filed, waiving a hearing, in response to a Board Order of May 25, 1978. No hearing was held in this matter. On June 16, 1978, the Environmental Protection Agency filed a Recommendation that a variance from Rules 203(c) and 402 be granted, subject to certain conditions.

The Petitioner, Dix-Kell, serves two incorporated municipalities; the Village of Dix (pop. 280) in Jefferson County and the Village of Kell (pop. 180) in Marion County. The Village of Dix has an existing three-cell lagoon constructed in 1968 and operated by Dix-Kell. The facility operates under NPDES Permit No. IL 0023493; a USEPA Enforcement Compliance Schedule Letter established interim effluent concentration limitations of 35 mg/l of BOD₅ and 60 mg/l of suspended solids (Pet. p1-2; Rec. p3). The Village of Kell is presently served by individual septic tank systems (Pet. p2; Rec. p3).

The Villages submitted a Facilities Plan to the Agency December 1, 1977, which involves the expansion of the existing Dix lagoon system to 0.052 MGD and construction of a 0.026 MGD lagoon system to serve Kell. Estimated cost for these improvements is \$488,000.00 (Pet. p4). Both facilities will be managed and operated by Petitioner Dix-Kell (Rec. p4). Effluent from the proposed facilities will be discharged by unnamed tributaries to Casey Fork, which is tributary to

Rend Lake. The concentration of phosphorus in Rend Lake exceeds the water quality concentration limitation of 0.05 mg/l.

Rules 203(c) and 402 prohibit any discharge, alone or in combination, from causing or contributing to a violation of the 0.05 mg/l phosphorus water quality standard in any lake or in any stream at the point of entry in the lake. The application of Rules 203(c) and 402 to the proposed facilities of Dix-Kell would establish a phosphorus effluent concentration limitation of 0.05 mg/l. Dix-Kell does not need a variance from Rule 404(f) for phosphorus because a grant of relief from Rule 203(c) would remove the phosphorus water quality violation from the consideration of a lagoon exemption pursuant to Rule 404(f)(i) of Chapter 3, Country Aire Mobile Home Park v. EPA, PCB 77-126 (August 4, 1977).

Data from the National Eutrophication Survey indicates that the proposed facilities would contribute less than 1/2 of 1% of the total phosphorus loading to Rend Lake (Pet. pl).

Dix-Kell, after consideration of alternative methods of compliance (Pet. p3-4), concludes that compliance with the applicable 0.05 mg/l phosphorus limitation is not economically feasible (Pet. p5-6). The Agency agrees (Rec. p5).

The Board is familiar with the problems facing dischargers in meeting the 0.05 mg/l phosphorus limitation. City of Hoopeston, PCB 76-234, 24 PCB 441; Southern Illinois University at Edwardsville, PCB 77-111, 25 PCB 775; Valley Water Company, Inc., PCB 77-146, 25 PCB 289.

In those, and a number of other cases, the Agency and the Board have recognized that it is not economically feasible for the petitioners therein to comply with an effluent concentration limitation of 0.05 mg/l for phosphorus. In further recognition of this difficulty, the Agency has petitioned the Board in R76-1 for appropriate amendments to the phosphorus effluent limitations and water quality standards of Chapter 3. If the amendments proposed in R76-1 were adopted without change, Dix-Kell would not be required to provide phosphorus removal facilities at either proposed facility.

Petitioner has requested a permanent variance from the phosphorus requirements of Chapter 3 (Pet. p6); this relief the Board is unable to grant, Monsanto v. PCB, 367 N.E.2d 684 (1977). The Board will grant relief to the extent of its authority, or until final action of the Board in R76-1, whichever is earlier. The Board will direct the Agency to modify the existing NPDES permit, or as appropriate, to

issue a new NPDES permit consistent with this Opinion and Order which shall include such interim effluent limitations as may reasonably be achieved through the application of best practicable operation and maintenance practices in the existing facility.

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

ORDER

1. The Dix-Kell Water & Sewer Commission is granted a variance for the operation of its wastewater treatment facilities from Rules 203(c) and 402 of Chapter 3: Water Pollution Rules and Regulations regarding phosphorus until July 6, 1983, subject to the following condition:

- a) This variance will earlier terminate upon adoption by the Board of any modification of the existing phosphorus water quality standards and effluent limitations and the Petitioner shall comply with such revised regulations when adopted by the Board.

2. The Petition for Variance from the phosphorus requirements of Rule 404(f) of Chapter 3: Water Pollution Regulations is hereby dismissed.

3. Petitioner, within 30 days of the date of this Order, shall request Agency modification of NPDES Permit No. IL 0023493 to incorporate all conditions of the variance set forth herein.

4. The Agency, pursuant to Rule 914 of Chapter 3, shall modify Petitioner's NPDES permit consistent with the conditions set forth in this Order and such interim effluent limitations as may reasonably be achieved through the application of best practicable operation and maintenance practices in the existing facilities.

5. Within forty-five (45) days 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 stayed during judicial review of this variance pursuant to Section 31 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 78-141, understand and accept said Order, realizing that such acceptance renders all terms and conditions thereto binding and enforceable.

SIGNED

TITLE

DATE

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 6th day of July, 1978 by a vote of 4-0.

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