

ILLINOIS POLLUTION CONTROL BOARD

September 26, 1973

ALTON BOX BOARD COMPANY,)
)
 Petitioner,)
)
 v.) PCB 73-140
)
 ENVIRONMENTAL PROTECTION AGENCY,)
)
 Respondent.)

ORDER ON PETITION FOR RECONSIDERATION (by Mr. Henss)

On September 12, 1973 Respondent Environmental Protection Agency filed Petition for Review with the Appellate Court for the Fifth District of Illinois. At the same time, the EPA also filed Petition for Reconsideration with this Board. Alton Box Board has filed Cross Petition for Review. The appeals removed the jurisdiction of this Board and for that reason, if no other, we would be compelled to deny reconsideration (Brehm vs. Piatrowski, 409 Ill. 87).

However, with one exception, the Petition for Reconsideration is also inadequate when considered on its merits. The EPA grossly misreads the record and the Board Opinion of August 9, 1973 in order to make its argument for reconsideration.

The Agency is wrong in stating that our Order will allow Alton Box to violate the water quality/dissolved oxygen standard for the Mississippi. The record indicates that the dissolved oxygen standard is not being violated at this time. The program we have approved is designed to reduce BOD and therefore improve the dissolved oxygen of the River to a higher level. If the Record is correct, Alton Box can not deplete the oxygen content of the Mississippi below the Standard unless the Company violates the terms of the program approved by us.

From this record we can conclude that one water quality standard--the color standard--is being violated. The photographs and evidence show a dark colored effluent which is called "black liquor". This is caused by the use of wood chips in the Petitioner's process. A key part of the program, however, is to eliminate the use of wood chips and this in turn should abate this black liquor effluent.

It was the Agency, not Petitioner, which failed to introduce evidence on essential parts of the case. Alton Box introduced the only evidence regarding the effect of its effluent on the Mississippi. The EPA introduced none. It was Dr. James Irvin, Petitioner's witness, who said: Toxicity of the waste would not be a problem (R. 270) the BOD discharge would not have a significant effect on the Mississippi (R. 273) and that three areas of the River provided a high re-aeration capability, i.e. spillway at Lock and Dam #26, turbulent area at Chain of Rocks, and confluence of the Mississippi with the Missouri. It was Petitioner's witness who said the discharge of 2.5 tons per day of suspended solids was "rather insignificant" (R. 276) when compared to suspended solids carried by the Mississippi ranging from 88,000 to 359,000 tons per day.

Our Opinion shows that we seriously questioned some of these contentions by Alton Box Board Company. However, they stand unrebutted in the Record.

The Environmental Protection Act in Section 37 and Section 33 provides that "after due consideration of written and oral statements, the testimony and arguments that shall be submitted at the hearing...the Board shall issue and enter such final Order, or make such final determination, as it shall deem appropriate under the circumstances." We have done so. Our decision is clearly supported by the Record. If the Agency is concerned that our decision in this variance case may have some effect on the enforcement case which is pending then it should have introduced its evidence in this particular proceeding. Under the Statute, we were not able to delay the ruling or consider matters which were not a part of the record. If the variance does have an effect on the prosecution case it is limited to BOD and suspended solids since we considered only those two pollutants.

During oral argument before the Board, Alton Box requested that it be given permission to amend the Petition by interlineation to request a variance from Section 405 of the Water Pollution Regulations. The Board gave permission for this amendment but Alton Box failed to follow through and make the amendment as it had requested leave to do. A review of the record reveals that there is no evidence which would justify variance from Section 405. If appeal had not been commenced and our jurisdiction thereby removed, we would modify the Opinion by removing the Section 405 variance from paragraph 1 of our Order. Under the circumstances we can not, and we will leave consideration of that issue to the Appellate Court.

Petition for Reconsideration is denied.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Order on Petition for Reconsideration was adopted this 16th day of February, 1973 by a vote of 5 to 2.

Christan L. Moffett

