

ILLINOIS POLLUTION CONTROL BOARD
January 27, 1983

VILLAGE OF WAUCONDA,)
)
 Petitioner,)
)
 v.) PCB 82-28
)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

MR. HERCULES PAUL ZAGORAS, ATTORNEY-AT-LAW, APPEARED ON BEHALF OF THE VILLAGE OF WAUCONDA;
MS. MARY E. DRAKE APPEARED ON BEHALF OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY.

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

On March 18, 1982 the Village of Wauconda (Wauconda) filed a petition for variance or for extension of variance from old Rule 407 (c) [now Section 304.123(c)] of Chapter 3: Water Pollution, as it relates to phosphorus discharges. Hearing was held on August 4, 1982 and a second hearing was scheduled for September 9, 1982 upon Wauconda's request. However, on September 9, 1982 Wauconda waived the second hearing. On August 30, 1982 the Illinois Environmental Protection Agency (Agency) filed a recommendation that the requested variance be granted. The recommendation was accompanied by a motion to file instanter which is hereby granted.

Wauconda owns and operates a sewage treatment plant which provides secondary treatment for a design population equivalent of 8,000. Discharge is to Bangs Lake Creek, which is tributary to the Fox River. Discharge is pursuant to NPDES Permit No. IL0020109 which upon reissuance, absent variance, will require an effluent phosphorus limitation of 1.0 mg/l.

On August 4, 1977 Wauconda was granted a variance (PCB 77-125, 27 PCB 157) from old Rules 203(c) and 402 of Chapter 3 until January 1, 1981 or until the Board modified the phosphorus standards, whichever came first. Those standards were modified on April 26, 1979, at which time the variance expired. On February 5, 1981 Wauconda requested a variance from the old Rule 407(c) phosphorus limitation (PCB 81-17, 41 PCB 431) which request was denied on May 1, 1981 due to the discharge's adverse impact on Slocum Lake and for failure to allege any hardship in meeting the 1.0 mg/l phosphorus standards. On June 5, 1981 Wauconda filed a motion for reconsideration which was denied.

by Board Order of June 25, 1981 (42 PCB 123). In the denial order, however, the Board indicated that it would consider a new petition. Wauconda appealed the Board's decision to the Second District Appellate Court which in turn affirmed the Board's denial (Village of Wauconda v. IPCB and IEPA, Gen. No. 81-568, January 26, 1982). Thereafter, Wauconda filed the petition under consideration here.

Wauconda is currently in the Construction Grants Program for upgrading its wastewater treatment facilities and for construction of a Bangs Lake Creek diversion channel to provide a bypass for the treatment plant effluent around Slocum Lake. Wauconda is in the process of preparing plans and specifications for the work as a part of the Step 2 (design) phase. As of the date of hearing completion of the project was expected to be about October 1, 1983. At the time of its recommendation, the Agency agreed that Wauconda's completion schedule was reasonable if the grant process proceeded smoothly.

In determining whether variance from the phosphorus limitation of Section 304.123(c) should be granted, the Board must first consider the environmental impact. That impact is upon Slocum Lake which was the subject of a 1976 study conducted by the United States Environmental Protection Agency which indicated that the lake is highly eutrophic, ranking 27th of 31 lakes studied. Further, Wauconda's wastewater treatment plant was found to contribute nearly 53% of the total phosphorus loading. The study recommended that "all phosphorus inputs should be minimized." A 1977 Department of Conservation letter noted "intense algal blooms...[and] numerous summer and winter fish kills." Later, it stated that "the lake is nothing but an oxidation pit for the effluent it receives."

Presently, Wauconda is not providing adequate phosphorus removal. Its system does not operate continuously due to frequent plugging and freezing in the winter months, though the Agency notes that the phosphorus effluent levels have improved from a 1977 concentration of 5.5 mg/l to 1981 levels of 3 mg/l.

However, given the present poor condition of Slocum Lake, even levels of 3 mg/l are unacceptable absent substantial hardship in achieving compliance with the 1.0 mg/l standard.

Wauconda alleges that such hardship exists due to the high cost of compliance. The Agency agrees with Wauconda's estimates that to reach compliance a permanent treatment facility with a design capacity of 12,000 population equivalents would have to be constructed at a cost of \$125,000 and would require operating expenses of \$32,250 to \$64,500 per year. A temporary facility, however, could be built for \$10,000 - \$15,000 with operating expenses of \$24,000. According to Wauconda, such a facility could not consistently meet the 1 mg/l phosphorus

limitation, but it could easily meet a 3 mg/l standard. The Agency, however, states that it "could probably meet the 1.0 mg/l limitation if sufficient alum is used" (Ag. Rec. 4).

Certainly, construction of permanent facilities is unreasonable. Not only would a minimum expense of \$125,000 be incurred, but by the time such facilities were completed, the proposed bypass around Slocum Lake would probably be completed, thereby obviating the need to meet the 1 mg/l limitation.

The Agency, therefore, recommends that variance be granted subject to certain conditions, including a 3 mg/l phosphorus limitation and the construction of temporary facilities which, according to Wauconda, would take 3 to 6 months to build, although Agency personnel and Wauconda's permit application state that construction should only take one month.

At some time in the past, the Agency's recommendation would have been reasonable. However, as time passes, the reasonableness of any further expense for new phosphorus control facilities lessens in that the overall pollutant loading reduction decreases as the date for completion of the bypass approaches. At hearing, the completion of the diversion of the Creek was expected by October 1, 1983 (R. 31). However, that date was premised upon approval by United States Environmental Protection Agency (USEPA) by November 1, 1982 (R. 28). Most recently, however, Wauconda's engineer has indicated USEPA approval to be on or about April 1, 1983. (See letter filed January 13, 1983). Assuming that that delay causes the same delay in completion, the diversion should be operational by March 1, 1984.

Therefore, if the Board were to follow the Agency's recommendation, Wauconda would be required to expend \$34,000 to \$39,000 to replace the present system (which has been producing an average monthly effluent of 1.9 to 4.0 mg/l of phosphorus) with temporary facilities (which would produce an effluent with 1.0 to 3.0 mg/l) for a one year period. That, too, appears unreasonable.

However, it is also unreasonable for the Board to allow continued non-compliance and the use of a "jerry built system" that the Board has already found to be "wholly inadequate" (41 PCB 432).

The reason for this dilemma is clear. If Wauconda had properly complied with the Board's Order of August 4, 1977, it would have built a system capable of meeting the 3.0 mg/l limitation established in that variance and would have applied for an extension of that variance about August 26, 1979 when that variance expired according to its own terms. Instead, Wauconda used an inadequate system and did not apply for an extension until February 5, 1981 at which time it inadequately carried its burden of showing an arbitrary or unreasonable hardship. It then failed to take any action toward immediate compliance, but rather brought this petition at a time when any further expense appears unreasonable.

Based upon these facts, the Board cannot find that Wauconda has shown "satisfactory progress" as required for the granting of an extension of variance under Section 36(b) of the Environmental Protection Act (Act). That the petition in this matter should be treated as being for an extension of variance is clear; otherwise, by simply waiting until the previous variance expires prior to reapplication, the petitioner can avoid the burden of showing satisfactory progress. Such could not be the intent of the Act.

Thus, the Board finds that variance must be denied. Obviously, such denial leaves Wauconda open to an enforcement action. In that regard, the Board notes that the reasonableness of Wauconda's actions and any steps taken to reduce the adverse impact of the discharge must be taken into the Board's consideration of any penalty that may be imposed in a future enforcement proceeding.


This opinion constitutes the Board's findings of fact and conclusions of law.

ORDER

The Village of Wauconda is hereby denied variance from Section 304.123(c) of Subtitle C: Water Pollution.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 27th day of January, 1983 by a vote of 3-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board