

ILLINOIS POLLUTION CONTROL BOARD
January 9, 1986

VILLAGE OF WAUCONDA,)
)
 Petitioner,)
)
 v.) PCB 83-237
)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

MR. HERCULES PAUL ZAGORAS APPEARED ON BEHALF OF THE VILLAGE OF WAUCONDA.

MS. MARY DRAKE AND MR. STEPHEN C. EWART APPEARED ON BEHALF OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY.

OPINION AND ORDER OF THE BOARD (by R. C. Flemal):

This matter comes before the Board upon a petition for variance filed by the Village of Wauconda ("Wauconda") on December 28, 1983. Wauconda seeks variance relief from the effluent limitation pertaining to phosphorus, found at 35 Ill. Adm. Code 304.123(c) (formerly Rule 407(c) of Chapter 3: Water Pollution) until December 31, 1986. Relief is granted, subject to conditions.

The Illinois Environmental Protection Agency ("Agency") submitted a Recommendation to the Board on February 3, 1984, which recommended that the Board deny variance relief based principally on the belief that the compliance plan as then presented was not implementable. Hearing was held on March 30, 1984, and on January 23, 1985 Wauconda filed an Answer to the Agency's Recommendation. Another hearing was held on June 11, 1985, and Wauconda filed Amended Petitions on July 23, 1985 and on November 7, 1985. The Agency filed an Amended Recommendation on December 9, 1985, recommending that the requested relief as specified in the Amended Petitions be granted with conditions.

The long time that this case has been on the Board's docket is related to a long series of waivers of the statutory time for decision, filing of amended petitions, and cancelled hearings. This case also has antecedents in several previous Board cases, including PCB 77-125, PCB 77-191, PCB 78-124, PCB 81-17, and PCB 82-28, the records of which have been incorporated into the present proceeding. Rather than review this extensive record in its entirety, the following overview is presented.

CASE OVERVIEW

Wauconda owns and operates a municipal sewage treatment plant located in Lake County, Illinois. Discharge from the plant was, and continues to be, directed into Bangs Lake Creek which flows approximately two miles to Slocum Lake, which is tributary to the Fox River. This configuration, in combination with the level of treatment available at the plant, occasioned concern regarding the quality of water in Bangs Lake Creek and Slocum Lake. Wauconda has undertaken various actions, including plant improvements, some of which are in progress, to meet these concerns. Several variance requests were also pursued; these constitute the principal subject matter of the several incorporated records.

Of continuing concern has been the inability of Wauconda, despite apparent achievement of all other standards, to meet the conditions of 35 Ill. Adm. Code 304.123(c), which specifies that:

No effluent from any source which discharges to a lake or reservoir with a surface area of 3.1 ha (20 acres) or more or to any tributary to such a lake or reservoir and whose untreated waste load is 5000 or more population equivalents shall contain more than 1.0 mg/l of phosphorus as P.

That this regulation is applicable to Wauconda's discharge is uncontested, since it is uncontested that Slocum Lake has a surface area greater than 20 acres and that Wauconda has an untreated waste load in excess of 5000 population equivalents.

Wauconda has accordingly pursued several possible remedies, the focus of which at this date is to by-pass its effluent around Slocum Lake. Although the possibility of by-passing Slocum Lake was originally presented to this Board as early as in the matter of PBC 77-191, various difficulties, including unavailability of funding, problems with easements, and alterations in by-pass design and conception, have prevented actual construction of a by-pass. It is only within the recent several months that a workable design and construction program have been realized.

At present Wauconda is proceeding on a schedule which will have a by-pass system, the Anderson Road By-pass, in operation by December 31, 1986 (July 23, 1985 Amended Petition, p.2). Petitioner accordingly requests variance from the 1.0 mg/l phosphorus limitation such as to allow a maximum monthly average of 3.0 mg/l until the scheduled December 31, 1986 completion date (July 23, 1985 Amended Petition p.2).

ENVIRONMENTAL IMPACT

Environmental impact focuses on two issues: whether granting of the variance would have impact on the Bangs Lake Creek - Slocum Lake system and whether construction of the Anderson Road By-pass would produce impact on the adjacent lands and waterways. As to the first matter, the Board notes that Wauconda has been contributing phosphorus to the Bangs Lake Creek - Slocum

Lake system in excess of 1.0 mg/l for a substantial period of time. The Board further notes that it is unreasonable to expect that Wauconda could achieve the required reduction in phosphorus concentration in the next twelve months by any means other than the proposed by-pass. Additionally the Board notes that Wauconda presently does achieve some phosphorus reduction within its existing treatment program.

Accordingly, while the Board is not comfortable with the prospect that Bangs Lake Creek - Slocum Lake need look forward to at least some additional months of elevated phosphorus inputs, the Board finds that the proposal to by-pass is more environmentally sound in the long run than would be the alternative of investing additional time to develop and implement an alternative program. The Board further finds that any granting of the requested relief is appropriately conditioned upon Petitioner continuing to achieve the level of phosphorus reduction attainable within its existing facilities.

The matter of environmental impact caused by the particular nature and type of by-pass to be used has been developed extensively in the record. Most of this deals with various by-pass alternatives no longer proposed by Wauconda and hence is not pertinent to the matter presently before the Board. Wauconda contends, and the Agency concurs (Amended Recommendation p.4), that there will be minimal adverse environmental impact from the current plan, the Anderson Road By-pass.

HARDSHIP

Both Wauconda and the Agency (Amended Recommendation p.4) contend that, because Petitioner has maintained its schedule for upgrading and expansion of its sewage treatment plant, denial of relief in the final stages of the construction, which involves the by-pass, would constitute an arbitrary or unreasonable hardship. The Board concurs with this assertion, and finds that denial of variance relief in this instance would constitute an arbitrary or unreasonable hardship not justified by the environmental impact. Accordingly, the Board will grant the requested relief, subject to conditions.

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

ORDER

The Village of Wauconda is hereby granted a variance from 35 Ill. Adm. Code 304.123(c) for its sewage treatment plant subject to conditions as follows:

- 1) The variance shall be effective December 28, 1983 and shall terminate December 31, 1986 or upon completion of the Anderson Road By-pass, whichever occurs first.

- 2) During the term of the variance, Peititioner shall meet an interim phosphorus effluent limitation of a monthly average of 3.0 mg/l as P.
- 3) Petitioner shall operate its interim phosphorus removal facilities so as to achieve maximum phosphorus removal efficiencies.
- 4) Petitioner shall sample and analyze its discharge for phosphorus twice weekly using composite samples.
- 5) Petitioner shall complete construction of the effluent by-pass system as quickly as possible.
- 6) Within forty-five (45) days after the date of the Board Order the Petitioner shall execute and sent to:

Illinois Environmental Protection Agency
Division of Water Pollution Control
Compliance Assurance Section -- Variance Unit
2200 Churchill Road
Springfield, Illinois 62706
Attention: James Frost

a certification of acceptance of this variance by which it agrees to be bound by its terms and conditions. This forty-five (45) day period shall be held in abeyance for any period which this matter is appealed. The form of the certification shall be as follows.

CERTIFICATION

The Village of Wauconda, having read the Order of the Illinois Pollution Control Board, in PCB 83-237 dated January 9, 1986, understands and accepts the said Order, realizing that such acceptance renders all terms and conditions thereto binding and enforceable.

Village of Wauconda

By: Authorized Agent

Title

Date

IT IS SO ORDERED.

John Marlin and J. Theodore Meyer concurred, and Joan Anderson dissented.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 9th day of January, 1986, by a vote of 6-1.

Dorothy M. Gunn
Dorothy M. Gunn, Clerk
Illinois Pollution Control