

ILLINOIS POLLUTION CONTROL BOARD
May 5, 1983

VILLAGE OF ELIZABETH,)
)
 Petitioner,)
)
 v.) PCB 83-20
)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

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

This matter comes before the Board upon a petition for variance filed February 17, 1983 by the Village of Elizabeth. The petition requested a variance from fecal coliform monitoring requirements of the NPDES permit for the Village's wastewater treatment plant. On March 16, 1983 the Illinois Environmental Protection Agency (Agency) recommended that the variance be denied. No hearing was held and the Board has received no public comment.

The Village, which has a population of 772, operates a wastewater treatment plant in Jo Daviess County. Pursuant to NPDES Permit No. IL0022373, the plant discharges 91,000 gallons per day to the Apple River, a direct tributary of the Mississippi River.

From 1976 through September 24, 1982, the NPDES permit contained a condition requiring that residual chlorine be maintained between 0.2 and 0.75 mg/l in the effluent; the current permit limits fecal coliform to 400 counts per 100 ml. The old permit required monitoring by residual chlorine; the new requires monitoring of fecal coliform by actual count.

The new permit condition was based on the 400 count/100 ml fecal coliform standard of 35 Ill. Adm. Code 304.121, which has been repealed by the Board (R77-12D, 6 Ill. Reg. 13,750, effective October 26, 1982). The repeal of Section 304.121 was stayed by the Appellate Court.

The Agency imposes monitoring conditions pursuant to 35 Ill. Adm. Code 309.146. Compliance with such conditions is required by 35 Ill. Adm. Code 305.105(b).

The petition identifies no Board rule from which a variance is requested. The Agency recommends that the petition be construed as a request for a variance from Section 305.102(b), and as such be denied.

The Board will not construe the petition as a request for a variance from Section 305.102(b). To do so would invite back door requests for variances from permit conditions contrary to the intent of Section 35(a) of the Environmental Protection Act (Act). To be effective, a variance from the requirement to comply with monitoring conditions would have to address Section 12(f) of the Act and the Clean Water Act. The correct procedure is to request a variance from any underlying Board rule requiring the condition. Permit modification can be ordered pursuant to Section 309.184. The Village would have the opportunity to show that, as a matter of fact, residual chlorine levels correlate with fecal coliform levels so that residual chlorine is representative of fecal coliform levels. Such a showing should be made by way of a request for a permit modification. Agency refusal to modify may be appealed to the Board pursuant to 35 Ill. Adm. Code 105.

In that the Board is unaware of any regulation which requires monitoring by fecal coliform count, it will deny the petition requesting relief which the Board cannot grant.

The Agency has advanced an argument that 40 CFR 122.11(b) requires that all permits shall specify:

...(b) Required monitoring including type, intervals, and frequency sufficient to yield data which are representative of the monitored activity including, when appropriate, continuous monitoring;

The Board questions whether 40 CFR 122.11(b) applies to NPDES permits issued by the Agency. When adopted by the Board, the rules now found at 35 Ill. Adm. Code 309, Subpart A were drawn from the federal NPDES rules, which are now consolidated in 40 CFR 122. There is no corresponding requirement in 35 Ill. Adm. Code 309.146. The Agency may wish to propose new rules to track new federal NPDES procedures. However, until it does so, the rules adopted by the Board and approved by USEPA are the rules applicable to NPDES permit issuance (40 CFR 123.13 and 123.15).

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

ORDER

The petition is denied.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order were adopted on the 5th day of May, 1983 by a vote of 4-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board