

State of Vermont

Water Resources Board

Appeal of Lucille Farm
Products, Incorporated
from Pretreatment Discharge
Permit #3-1059

10 V.S.A. §1269
Findings of Fact,
Conclusions of Law and
Order

Introduction

A hearing regarding the above entitled matter was held by the Water Resources Board on November 21, 1985. The parties to this proceeding were:

- (a) Lucille Farm Products, Incorporated by Andrew Field, Esquire
- (b) Agency of Environmental Conservation by Stephanie Kaplan, Esquire

During the course of this proceeding the following documents were entered as exhibits by stipulation by both parties:

Exhibit #1: A draft pretreatment discharge permit for Lucille Farm Products, Incorporated issued for public comment purposes and a cover letter dated April 2, 1985 signed by Brian Kooiker on behalf of the Department of Water Resources and Environmental Engineering.

Exhibit #2: A letter dated May 21, 1985, addressed to Mr. Andrew Field from Robert Scheible; re: Draft pretreatment discharge permit - file #06-16-003.

Exhibit #3 A letter dated June 20, 1985, addressed to Mr. Philip Falirene, President, Lucille Farm Products, Inc. from Brian D. Kooiker on behalf of the Department of Water Resources and Environmental Engineering.

Exhibit #4 Pretreatment discharge permit #3-1059 dated June 20, 1985, by Jonathan Lash, Commissioner, Department of Water Resources and Environmental Engineering.

Exhibit #5 A letter dated November 8, 1985, addressed to Mr. Robert Scheible on behalf of Lucille Farm Products, Incorporated from Brian Kooiker on behalf of the Department of Water Resources and Environmental Engineering.

Findings of Fact and Conclusions of Law

1. The Appellant, Lucille Farm Products, Incorporated, ("Lucille") operates a plant producing cheese located in Swanton, Vermont.
2. Until recently cheese manufacturing process wastes ("wastes") from the plant were disposed of without pretreatment via the municipal sewer system and were treated at the Village of Swanton's wastewater treatment facility.

Lucille Farm Products, Incorporated

February 25, 1986

page 2

3. Lucille's untreated wastes exerted a sufficiently great biological oxygen demand (herein called "BOD₅") which threatened the Village wastewater treatment facility's ability to discharge treated wastes in compliance with its discharge permit.
4. The Village wastewater treatment facility discharges treated wastes into the Missisquoi River under the terms of a Discharge Permit issued on behalf of the Secretary of the Agency of Environmental Conservation by the Department of Water Resources and Environmental Engineering ("Department").
5. Lucille was required to construct a pretreatment facility into which its wastes would be deposited and treated before being discharged into the Village wastewater treatment facility. Lucille's pretreatment facility was required to obtain a Pretreatment Discharge Permit under 10 V.S.A. §1263.
6. The Department issued Lucille a draft Pretreatment Discharge Permit for public comment on April 2, 1985. (Exhibit #1)
7. Robert Scheible, engineering consultant for Lucille, submitted to the Department extensive comments on a number of the conditions contained within the draft permit. (Exhibit #2)
8. Following its review of Mr. Scheible's comments, the Department made several changes to the draft permit. On June 20, 1985 the Department issued Pretreatment Discharge Permit #3-1059 ("permit") (Exhibit #4). The Department also responded to Mr. Scheible's comments (Exhibit #3).
9. After Lucille had filed its appeal with the Water Resources Board, representatives of the Department met with Mr. Scheible regarding permit conditions still at issue. As a result, the Department agreed that some of the conditions of the permit should be modified. (Exhibit #5)
10. The permit conditions under appeal can be divided into two categories: (1) those conditions which Lucille alleges the Department does not have the authority to impose, and (2) those conditions which Lucille alleges may be authorized by law but which are being imposed unreasonably on it.
11. Under the permit, flow into the pretreatment facility is limited to 80,000 gpd on a monthly average and BOD₅ is limited to 2,500 lbs/day on a monthly average and 5,000 lbs/day daily maximum. The amount of BOD₅ permitted to be discharged from the pretreatment facility to the Village wastewater treatment facility is 75 lbs/day on a monthly average and 100 lbs/day daily maximum.

12. Lucille has designed its pre-treatment facility to treat waste flows of 100,000 gpd (monthly average) in order to achieve an effluent which complies with the permit limitations on BOD₅.
13. Based on a more conservative estimate of the performance capabilities of Lucille's pretreatment facility, the Department has limited waste flows to 80,000 gpd (monthly average) to better insure that the wastes discharged into the Village wastewater treatment facility will in fact comply with the permit's BOD₅ requirements.
14. While it may be in Lucille's best interests to limit flows to its pretreatment facility in order to avoid the potential consequences of a violation of the permit's BOD₅ requirements, the Board concludes that the Department lacks the authority under 10 V.S.A. §1263(c) to require operation of the pretreatment facility at less than its design capacity of 100,000 gpd (monthly average).
15. The permit requires the use of two separate meters to measure flow: a flow meter which must be read manually, and a recording flow meter. Lucille does not object to the manually read meter, but does object to the recording flow meter. The cost of the recording flow meter is between \$1,500 and \$2,000, as contrasted with the total cost of the pretreatment facility of \$1,000,000.
16. The purpose of the recording flow meter is to better insure an accurate record of flows. The recording meter, when properly operated and maintained, provides a written record as a backup to the manually read flow meter.
17. Both a manual and a recording flow meter are generally required in discharge permits issued for the approximately 38 pretreatment facilities and 90 municipal wastewater treatment facilities in Vermont.
18. Accurate records of flow are critical to the evaluation of the pretreatment facility's performance and therefore the Board concludes that the requirement of a recording flow meter as well as a manually read flow meter is a reasonable exercise of the Department's authority under 10 V.S.A. §1263(c).
19. A direct connection between Lucille's plant and the Village wastewater treatment facility via the municipal sewer line is currently controlled by a valve in the sewer line.
20. The permit requires that this valve be permanently plugged in order to prevent Lucille's pretreatment facility from being bypassed.

February 25, 1986

page 4

21. The Village of Swanton controls the use of this valve by means of a "key" which would allow it, but not Lucille, to bypass the pretreatment facility in an emergency situation.
22. Bypassing the use of Lucille's pretreatment facility is not authorized without the prior approval of the Department under 10 V.S.A., Chapter 47.
23. The Board concludes that plugging the valve on the municipal sewer is not reasonably necessary to insure control over the potential bypassing of the pretreatment facility, and exceeds the authority of the Department to impose permit conditions.
24. The paragraph in the permit (Part IA on page 1 of 10) reading "There shall be no discharge. . ." is a statutory requirement which must be met prior to the issuance of a Discharge Permit (10 V.S.A. §1263(a) and (c)) and therefore is not properly included as a condition of any such permit.
25. The permit's requirements for a "waste management plan" (Part I B on page 2 of 10) and an "operations and maintenance manual" (Part I B (7) on page 3 of 10) represent reasonable permit conditions imposed pursuant to the Department's authority under 10 V.S.A. §1263 (c).
26. The Department's own regulations, the "Vermont Water Pollution Control Regulations" at 13.1(1) define the term "reporting form" as meaning:

. . . the uniform national forms (including subsequent additions, revisions, or modifications duly promulgated by the Administrator pursuant to the Federal Act) for report data and information pursuant to monitoring and other conditions of permits.

Accordingly, the Board concludes that the Department is required by its own rules to utilize the reporting forms defined above.

27. The apparent intent of subparagraphs 1 and 3 of the permit's "management requirements" (Part II A page 6 of 10) is a reasonable use of the Department's authority, however, the Board concludes that portions of these two subparagraphs are redundant and unnecessary and therefore, as written, constitute an unreasonable use of the Department's authority under 10 V.S.A. §1263(c).
28. To the extent that they are inconsistent with the foregoing, all Findings of Fact and Conclusions of Law proposed by the parties are hereby denied.

29. The Board has considered the Agency of Environmental Conservation's Motion to Reopen and the various memoranda filed in conjunction therewith and has determined that the issues raised in the motion are not relevant to the issues of this appeal.

Order

1. The Agency of Environmental Conservation's Motion to Reopen the hearing is denied.
2. On the basis of the above findings of fact and conclusions of law and exhibit #5 the Water Resources Board hereby amends Pretreatment Discharge Permit #3-1059 as indicated below.
 - a. Part I A on page 1 of 10 is amended as follows:
 - (1) The discharge limitation for flow shall be .100 MGD (Monthly Average).
 - (2) The monitoring requirement for pH shall be one sample per week.
 - (3) The following paragraph is deleted:

"There shall be no discharge of any waste into the Village of Swanton Wastewater Treatment Facility which interferes with, passes through without treatment or is otherwise incompatible with the treatment facility or would have substantial adverse effect on the treatment facility or on water quality."
 - b. Part I B on page 2 of 10 is amended as follows:
 - (1) Special condition 2 shall read: "By September 1, 1985, Lucille Farms, Incorporated shall have installed and fully operational an effluent flow chart recorder which measures flow in either gallons or pump run time."
 - (2) Special condition 3 shall read: "The permittee shall be required to verify 95% accuracy of effluent flow monitoring devices not more than once per month."
 - (3) Special condition 6 is deleted.
 - c. Part I D on page 5 of 10 is amended as follows:
 - (1) Paragraph 5 shall read:

"5. Recording of Results:

For each measurement or sample taken pursuant to the effluent monitoring required by part I A (page

1 of 10 as amended), the permittee shall record the following information:

- a. The exact place, date, and time of sampling;
- b. The dates the analyses were performed;
- c. The person(s) who performed the analyses;
- d. The analytical techniques or methods used;
- e. The results of all required analyses and,"

(2) Paragraph 6 shall read:

"6. Additional Monitoring by Permittee

If the permittee monitors any pollutant at the outfall S/N 001 (Pretreated Cheese Manufacturing process wastes) more frequently than required by this permit, using approved analytical methods as specified above, the results of such monitoring shall be included in the calculation and reporting of the values required in reporting from WR-43. Such increased frequency shall also be indicated."

(3) Paragraph 7 shall read:

"7. Records Retention

All records and information resulting from the effluent monitoring required by part I A (page 1 of 10 as amended) including all records of analyses performed and calibration and maintenance of instrumentation shall be retained for a minimum of three (3) years, or longer if requested by the Secretary."

d. Part II A on page 6 of 10 is amended as follows:

(1) Paragraph 1 shall read:

"1. Change in Discharge

All discharges authorized herein shall be consistent with the terms and conditions of this permit. The discharge of any pollutant identified in this permit more frequently than or at a level in excess of that authorized shall constitute a violation of the permit."

(2) Paragraph 3 shall read:

"3. Facilities Operation

The permittee shall at all times maintain all components of its pretreatment facilities in good working order. It is recognized that not all components of the treatment system must operate at all times to achieve compliance with this permit, however, those components in use must be operated as efficiently as possible."

e. Appendix A (Form WR-43) is amended as follows:

- (1) The requirement for monitoring influent and effluent for settleable solids (columns 5 and 31) is deleted.
- (2) The calibration of the influent flow meter (columns 23-28) shall be a monthly pump flow rate evaluation based on wet well drawdown.

Done this 25th day of February, 1986, at Berlin, Vermont.

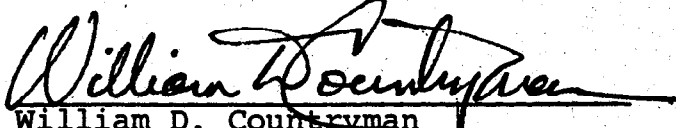
Vermont Water Resources Board



William Boyd Davies



Kathleen A. Scheele



William D. Countryman

Board members in favor of
this decision:

William Boyd Davies
Kathleen A. Scheele
William D. Countryman

Board members opposed:
None

Board members not participating:
Catharine B. Rachlin, Chairman
Thomas Adler