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BEFORE THE ENVIRONMENTAL
APPEALS BOARD
OF THE
STATE OF DELAWARE

IN RE:)
THE APPEAL OF ANGOLA BEACH MOBILE) FINDINGS OF FACT,
HOME PARK NPDES PERMIT) ORDER, AND REASONS

A public hearing was held before the Environmental Appeals Board of the State of Delaware on Tuesday, June 29, 1976, Dover, Delaware, upon the appeal of Friends of Herring Creek from the decision of the Secretary of the Department of Natural Resources and Environmental Control to issue State Permit Number WPCC 3048/76 authorizing Frank E. Acierno to discharge effluent from the facility located at Angola Beach Mobile Home Park into receiving waters of Herring Creek near the intersection of Burton's Prong and Hopkins Prong.

Board members present at the hearing were:
Loren H. Frye, Chairman, Robert L. Boyer, Joseph B. Melson, Phyllis Schabinger, and Earl B. Tull.

The Appellant was represented by Robert L. Halbrog, Esq. Representing the Division of Environmental Control was David Hume, Assistant Attorney General of the State of Delaware.

FINDINGS OF FACT

1. Mr. Frank E. Acierno (hereinafter referred to as 'Applicant') made application in 1970 to the Department of Natural Resources and Environmental Control (hereinafter referred to as 'Department') for a permit to construct and operate a sewage disposal treatment plant at Angola Beach Mobile Home Park (Angola Beach).

2. In December 1970, a permit was issued to the applicant to construct and operate a sewage treatment plant at Angola Beach to accommodate 152 mobile home units with a daily discharge of 40,000 gallons into a seepage bed facility.

3. On June 28, 1972, the applicant made formal application for Angola Beach, Phase II.

4. On March 25, 1974, and April 30, 1974, public hearings were held on the Angola Beach, Phase II application.

5. On July 16, 1974, the Hearing Officer for the Department recommended to the Secretary that the permit be granted without an outfall into Herring Creek.

6. On April 16, 1975, the Secretary of the Department issued Order No. 75-W2 approving Angola Beach, Phase II, subject to the following conditions:

a. Applicant shall construct a 76,500 gallon per day treatment plant consisting of a lift station, comminutor, surge holding tank, activated sludge system, tertiary filter, aerobic digester and chlorinator, and two additional seepage beds, with the effluent being directed into an expanded eight seepage beds system;

b. The existing 40,000 gallons plant discharge will be redirected from seepage beds to an outfall into Herring Creek through an eight inch diameter three hundred foot long outfall; and

c. The Applicant must obtain a legally binding agreement whereby the existing 40,000 gallons per day treatment plant and

the new 76,500 gallons treatment plant will be maintained and operated by the Sussex County Engineer's Office.

7. In June 1975, Sussex County declined to take over the operation and maintenance of the sewage treatment plants.

8. On April 30, 1976, the Secretary of the Department issued an amendment to Order No. 75-W2 removing the requirement that Sussex County maintain and operate the sewage treatment plants. Among other requirements, the amended Order extended the location of the outfall from the 40,000 gallons per day treatment plant from three hundred feet to twelve hundred feet at the intersection of Burton's Prong and Hopkins Prong, in Herring Creek. The amended Order was issued without a prior public hearing.

9. On May 4, 1976, pursuant to the amended Order No. 75-W2, State Permit No. WPCC 3048/76, and NPDES Permit No. DE0021440 were issued to the Applicant by the Department to be effective from June 11, 1976, to May 31, 1981.

10. Herring Creek has been designated as an area to be used for prolonged intimate body contact with water in which there is a significant risk of ingestion. Swimming, fishing, and wading are among the uses for which the creek is intended.

11. Herring Creek has also been designated as an area to be used for fish, aquatic life, wildlife, and shellfish. The creek is presently a healthy environment for commercial and sport fish.

12. The permit issued on May 4, 1976, would allow the Applicant

to discharge suspended solids, coliforms, fecal coliforms, chlorine ~~and ph~~ into the receiving waters. The effluent would also react with the oxygen in the creek so as to reduce the quantity of oxygen.

13. Some of the substances, particularly chlorine, which would be introduced into the creek through the outfall, are toxic substances which are, in certain concentrations, harmful to humans, fish, wildlife, and aquatic life.

14. The nutrients introduced into the creek will promote algae blooms which might interfere with bathing and water skiing, further reduce the level of oxygen, and cause obnoxious odors.

15. Herring Creek is a shallow body of water with poor flushing capabilities which would not adequately disperse the quantity of effluent allowed through the outfall in the permit.

16. The water quality standards promulgated by the Department for Herring Creek pursuant to Delaware law will not be achieved through the application of treatment and effluent limitations contained in the permit. The water quality criteria related to suspended solids, coliforms, fecal coliforms, chlorine, ph, and dissolved oxygen are all in danger of being violated. Even if one or more, but not all, of these criteria were not endangered, the water quality standards would not be achieved under the terms of the permit.

17. The permit, as granted, presents a health hazard. It also would result in harm to fish and other aquatic life.

18. The use of seepage beds disperses undesirable effluents to a greater extent than does a direct pipe outfall into the creek. It

also provides additional filtering capability.

19. The concentration of effluents has a greater potential for stream degradation in this case than does the dispersal of such effluents.

20. The discharge of the effluent into a series of seepage beds is a more effective and desirable method of disposing of the effluents than an outfall because it would not result in the violation of applicable water quality standards.

21. The permit issued May 4, 1976, allows the Applicant to discharge a total of 116,500 gallons of effluent per day. The Applicant has adequate land to implement a seepage bed system which would accommodate 140,000 gallons of effluent per day.

22. The Applicant has a poor record of maintaining his treatment plant, but the State has adequate controls to assure future compliance.

ORDER

The amended Order No. 75-W2 and resulting permits are modified as follows:

1. The outfall pipe and resulting discharge into Herring Creek are not permitted; and
2. The effluent from both the 40,000 and 76,500 gallons per day sewage treatment plants may be discharged into a seepage bed system when and if such a system is approved by the Department in accordance with its regulations and statutory mandate.

All other terms and conditions of the amended

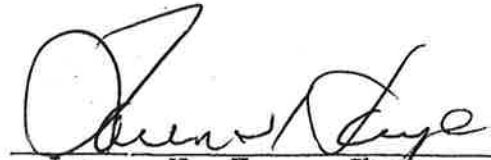
Order No. 75-W2, and the resulting permits are to remain in full force and effect insofar as they are not inconsistent with modifications 1. and 2., above.

REASONS

The reasons for this Order incorporate by reference the FINDINGS OF FACT, above. The Order is made pursuant to Title 7, Chapter 60, Delaware Code. The purpose of the Order is to effectuate State policy by protecting the public health, safety, and welfare, by protecting and conserving water resources for public recreational purposes, and by conserving aquatic life.

The amended Order and resulting permits issued by the Department would result in the violation of the Water Quality Standards for Streams promulgated by the Department, amended April 8, 1975, and effective April 23, 1975. An alternate system, one using seepage beds only, may be utilized without violation of the water quality standards.

Dated: 8/19/76


Loren H. Frye, Chairman


Robert G. Boyer


Joseph B. Melson


Phyllis G. Schabinger


Earl B. Tull