

ILLINOIS POLLUTION CONTROL BOARD
November 20, 1980

G.R.R. INVESTMENT CO., and TIMBERLAKE MOBILE)
HOME SUBDIVISION HOMEOWNERS ASSOCIATION,)
)
) Petitioner,)
)
) v.) PCB 80-130
)
) ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,)
)
) Respondent.)

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

This matter comes before the Board on the petition for variance filed July 15, 1980, as amended August 6, 1980, by the G.R.R. Investment Co. (G.R.R.) and the Timberlake Mobile Home Subdivision Homeowners Association (Timberlake). Petitioners seek variance from the fecal coliform limitation of Rule 405 of Chapter 3: Water Pollution. On October 24, 1980 the Environmental Protection Agency (Agency) filed its Recommendation in support of the grant of variance with conditions. Hearing was waived and none has been held.

The material before the Board does not make entirely clear G.R.R.'s interest in this matter. However, Petitioners were issued a construction permit in 1969 to install a three-cell lagoon wastewater treatment plant near Burksville, Monroe County, to serve 72 persons discharging an average of 5400 gpd of sewage to the lagoon system. The plant does not have facilities to chlorinate its effluent although this was required no later than July 1, 1972. A permit to construct and operate such facilities was issued to G.R.R. in January, 1980.

Petitioners' effluent is discharged into Rockhouse Creek, whose waters reach the Kaskaskia River. The Agency has never received the semi-annual Discharge Monitoring Reports from the Petitioners as required by their NPDES Permit. No Agency analysis of Petitioners' effluent was provided for the Board's consideration, although the Agency reported an analysis of fecal coliform from samples taken from the Kaskaskia River at Evansville. (The samples, taken on certain dates between October 13, 1976 to September 14, 1977 show three excursions from the 400 per 100 ml fecal coliform limit of Rule 405. These excursions were 470, 1100, and 2100 per 100 ml. Effluent is to be disinfected (chlorinated) when the fecal coliform limitation is exceeded, pursuant to Paragraph 9.1 of Chapter 90 of the Agency's "Recommended Standards for Sewage Works.")

Petitioners seek variance until such time as the Board reaches a decision in R77-12, Docket D. This regulatory proposal would eliminate the fecal coliform limit of Rule 405 for those treated discharges which are in excess of 20 miles from any food processing water intake, public water supply, or bathing beach. Petitioners and the Agency state that the nearest public water supply, which serves Evansville, Illinois, is located in excess of 25 miles downstream from Petitioners' discharge. The Board therefore assumes that Petitioners would be exempt from the fecal coliform limitation if the regulatory proposal is accepted. Also, the Board notes that, since the fecal coliform samples submitted by the Agency were taken at Evansville, these levels might not be due to Petitioners' effluent.

Petitioners estimate that it would cost approximately \$5,000 to install the necessary chlorination equipment, and an additional \$125 per month to operate and maintain it. (But see the Board's Opinion and Order of October 30, 1980 in R78-8, indicating that this estimate may be high.) They add that since there is only limited space on the top of the lagoon berm, land acquisition will impose additional costs. Petitioners explain that the income of Timberlake residents is generally in the low and fixed income range, and that the subdivision is currently in the process of upgrading its public water supply. Petitioners therefore argue that it would be arbitrary or unreasonable to require immediate installation of chlorination equipment, since scarce funds would be diverted from potable water improvement to effluent improvement (Pet. 2-3).

The Agency agrees that immediate compliance would impose an unreasonable hardship. However, it advises the Board that, in addition to the lack of Discharge Monitoring Reports, the Timberlake plant is currently being operated by an operator who is not certified. Variance from Rule 405 is nevertheless recommended, provided that variance is conditioned on correction of these two deficiencies.

The Board finds that denial of variance would impose an arbitrary or unreasonable hardship on Petitioners. While the Board acknowledges Petitioners' economic priority problems as between improvement of potable water and wastewater treatment systems, we must require that the reporting and certified operator requirements be met as conditions for variance from Rule 405. Downstream users must be afforded the protection these requirements provide. Variance will be granted for a period of two years, or until the Board reaches a decision in a final Order in the proposed rule change in R77-12, Docket D, whichever occurs first, subject to earlier termination if the petitioner fails to comply with the conditions outlined in the attached Order.

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

ORDER

1. Petitioners, G.R.R. Investment Co. and Timberlake Mobile Home Subdivision Homeowners Association, are hereby granted variance from the fecal coliform limitation of Rule 405 of Chapter 3: Water Pollution, for a period of two years from the date of this Order, or until the Board reaches a decision in a final Order in the proposed rule change in R77-12, Docket D, whichever occurs first, subject to the following conditions:

a) Not later than March 31, 1981, Petitioners shall either a) obtain the services of a properly certified sewage treatment plant operator, and shall so certify to the Agency at the address in paragraph 4, below, or b) petition the Board for variance from the certified operator requirement.

b) Petitioners shall promptly comply with the requirements to submit Discharge Monitoring Reports according to the schedule contained in their NPDES permit.

c) Petitioners shall operate their sewage treatment plant so as to minimize excursions from effluent limitations.

d) Within forty-five days of the date of this Order, Petitioners shall execute and forward to the Illinois Environmental Protection Agency, Division of Water Pollution Control, Variance Unit, 2200 Churchill Road, Springfield, Illinois 62706, a Certificate of Acceptance and Agreement to be bound to all terms and conditions of this variance. This forty-five day period shall be held in abeyance for any period this matter is being appealed. The form of the certificate shall be as follows:

CERTIFICATION

I, (We), _____, having read the Opinion and Order of the Illinois Pollution Control Board in PCB 80-130, dated _____, understand and accept the said Opinion and Order, realizing that such acceptance renders all terms and conditions thereto binding and enforceable.

_____, Petitioner

_____, Authorized Agent

_____, Title

_____, Date

2. The Agency is directed to modify petitioners' NPDES permit consistent with this Order.

IT IS SO ORDERED.

Mr. Dumelle dissented.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order were adopted on the 26th day of November, 1980 by a vote of 4-1.



Christan L. Moffett, Clerk
Illinois Pollution Control Board