ILLINOIS POLLUTION CONTROL BOARD
July 6, 1971

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| SPRAYING SYSTEMS, INC. | ) | |
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| v. | ) | # 71-72 |
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| ENVIRONMENTAL PROTECTION AGENCY | ) | |
| PULTE LAND CORP. | ) | |
| | ) | |
| v. | ) | # 71-75 |
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| ENVIRONMENTAL PROTECTION AGENCY | ) | |

Opinion and Order of the Board (by Mr. Currie):

On February 17, 1971 we entered an order in Environmental Protection Agency v. Village of Glendale Heights, # 70-8, finding the village was discharging inadequately treated sewage from an overloaded plant and ordering the construction of facilities, which the village had already begun, to remedy the situation. One paragraph of our order banned additional sewer connections tributary to the plant until the violation was corrected, on the ground that to permit them would compound the problem and increase pollution. The present petitions seek variances from that order to permit new connections before completion of the new facilities. We deny them.

Glendale Heights has a one-million-gallons-per-day (R. 20, 25) secondary plant whose effluent often exceeds the standards for secondary treatment (R. 13) because it is frequently overloaded. Rules and Regulations SWB-14 require a further stage of treatment for small receiving streams such as this one, the East Branch of the DuPage River. The Village is well on the way toward completion of its project. The tertiary filters and chlorination facilities are expected to be completed by July 14, 1971 (R. 46, 49) so that dry-weather flows (which average about 750,000 to 800,000 gpd (R. 92)) will by then be properly treated. The twin parallel primary and secondary facilities, which will give the system an additional 2 mgd of capacity, are expected to be finished and in full operation by August 15 (R. 44, 46, 52).

Thus if the petitioners have to wait to connect their new waste outlets to the village sewers they will not have to wait long. And indeed in the case of Spraying Systems there is no objection to waiting until August 15 (R. 119). That company is about to move from a plant in Bellwood to its new plant in Glendale Heights (R. 116). It will not be kept from doing business by the denial of the variance. Its reason for the request is that to delay starting the move until late September might cost it some orders since the move might then catch it in the middle of a rush buying period (R. 121-22). There was also testimony that a delay might cause the company to pay for taxes and upkeep of the old and new plants at once (R. 122), but the evidence is clear that this will be true until December even if the variance is granted since the move will be stretched out over that period (R. 123). Since Spraying Systems will not be able to begin its move until after the Village expects to have its plant completed (R. 111, 118), we see no likelihood of hardship. If, on the other hand, the plant is considerably delayed, we think the facts that the company can continue operating from its present plant and that it will be paying for both buildings until December anyway obviate any significant hardships that would justify allowing even the anticipated few thousand gallons per day of extra wastes to a plant already overloaded, as we shall make clear below.

Pulte has planned to build 384 units of new housing (R. 139) for more than 800 people (R. 162) in Glendale Heights. Except for model homes, it had not begun construction when our order came down, and it had not when the hearing was held June 2 (R. 148). After an initial quick-building period for the first units, a 60-day construction period is anticipated (R. 155). Pulte asks to connect 40 units per week (R. 155) starting July 15, adding an estimated 125 gallons per capita per day (R. 163). It argues (R. 206) that if it builds the houses now and leaves them idle until the treatment plant is done it must spend large sums for watchmen to prevent vandalism and pay interest on construction costs (R. 155, 157), while if it does not start construction until the plant is ready it will suffer from inflation in building costs (R. 152, 158). These alternatives do not exhaust the possibilities. The first houses can be started in time for completion when the plant is to be done, and there will be neither a need for long vacancies nor a long delay before building, since that date is August 15.

Pulte put on several witnesses who had purchased its homes, whose testimony was not very telling. One said she needed to know when the new homes would be available so she could sell her present house (R. 179-81); a second, with no lease problem, also had no pressing need to be in by July 15 (R. 182-83). A third

was getting married in late August and hoped to be able to move in by August 28 in order not to have to live with his parents (R. 174). A fourth had cancelled his order because of past delays the company attributed to the sewer ban (R. 177); there is nothing we can do about that now.

As in the Spraying Systems case, therefore, we see no great hardship if Pulte must wait a month longer than it desires in order to avoid pollution. We note also that neither petitioner introduced any evidence as to efforts to make alternative arrangements such as renting package treatment plants (R. 116), which as we noted in a related case were a possibility (League of Women Voters v. North Shore Sanitary District, # 70-7, March 31, 1971). Without such evidence there is inadequate proof of hardship. Moreover, Pulte was aware when it first investigated the land in question that the treatment plant was already dangerously loaded (R. 125); it cannot very well claim surprise. Further, it had not commenced construction when our order was handed down; not caught with nearly completed homes on its hands, it seeks to start building now, to conduct business as usual without regard to the pollution that would cause.

It is argued that July and August were dry months in 1970 (R. 17) and therefore that it is safe to allow an additional load until the plant is finished. But July in 1968 and 1969 was not so dry; flow exceeded a million gallons per day on six occasions in July 1968 and on seven in July 1969, with three July days in 1969 over two million (R. 100-02). Although the plant can put two mgd through without overflowing, it cannot give adequate treatment to more than one mgd (R. 27); and flows over two mgd will cause an overflow of raw sewage (R. 30, 32, 189). We cannot view these prospects with equanimity nor rely on 1971 to be as dry as 1970. While flows have been somewhat reduced by measures to control infiltration (R. 105), that is not the big reason for the 1969 high flows; the reason was heavy rainfall (R. 102).

It is argued that as soon as the tertiary filters are on line there will be adequate treatment even of excess flows. But there is no evidence to show what quality effluent would result from employing the filters on substantially undertreated sewage, except an unsupported and unexplained conclusion that the village believes the 4 ppm BOD standard can be met with 1 1/2 mgd (189), or to show the effect of such an effluent on the stream. The companies have not shown the addition of their wastes would be harmless or that its adverse effects would be outweighed by the hardships they would suffer from denial of their petitions. That the quantities of sewage involved in Spraying Systems are not huge (2000 gpd) is relevant but not decisive. Any single source may appear insubstantial, but as we showed in the North Shore case it is the proliferation of small sources that can cause an overpowering pollution problem. And the amounts in issue in Pulte are not all that small; we are asked to allow the addition

of 11,000 gpd each week, for a total of 104,000 gpd by October 14 (R. 164). If something went seriously wrong with the Village's schedule, Pulte with a variance would add 10% of the whole present capacity.

The principle of this decision is very simple: New construction must wait for adequate sewage treatment. In this day and age it is inexcusable for new sources of waste to operate without pollution controls. We see no reason in these cases to depart from the salutary principle of the original Glendale Heights case. In all probability the delay will be only until August 15.

The petitions for variance are denied. This opinion constitutes the Board's findings of fact, conclusions of law, and order.

I, Regina E. Ryan, Clerk of the Pollution Control Board, certify that the Board adopted the above Opinion and Order this 6 day of July, 1971.

Regina E. Ryan