

ILLINOIS POLLUTION CONTROL BOARD
January 10, 1980

CITY OF MT. VERNON,)
)
) Petitioner,)
)
) v.) PCB 79-226
)
) ENVIRONMENTAL PROTECTION AGENCY,)
)
) Respondent.)

OPINION AND ORDER OF THE BOARD (by Mr. Dumelle):

Petitioner has requested a variance from Rules 1201, 1202, and 1203 of Chapter 3: Water Pollution. The Agency has recommended that the variance be granted subject to conditions. No hearing was held.

Petitioner operates a sewage treatment facility with a design average flow of 3.8 million gallons per day. The facility includes primary clarification, a trickling filter, vacuum - backwash, sand filtration, reaeration, anaerobic digestion, and chlorination. The facility should be operated by a certified Class I operator, but Petitioner has been unable to obtain the services of a Class I operator since March, 1979. Petitioner is asking for a waiver of the Agency's prerequisites for a Class I examination, so that its present Class II operator can be properly certified. Petitioner claims that there are no Class I operators available in the vicinity and that an undue financial hardship would result if Petitioner were forced to bring someone in who does not live in the area. The present operator's salary fits within Petitioner's operating budget. Petitioner feels that it should not be required to increase its user charge to accommodate another operator. No details as to costs were given. The present operator, Mr. Harvey Neal, has been carrying out his duties admirably. Mr. Neal has been employed by Petitioner as a Class II operator since April, 1976.

In its Recommendation, the Agency states that Mr. Neal has achieved above average scores in the class he has taken towards his Class I certification and that he has 12 to 15 months experience remaining before he can sit for his examination. The Agency confirms that Mr. Neal has instituted several improvements in operation and maintenance since he took over and is capable of operating Petitioner's facility until he has received the proper training.

A review of Petitioner's discharge monitoring reports from July 1978 to September 1979 shows no violations of Petitioner's NPDES effluent limitations for BOD₅ and suspended solids.

The Agency feels that it cannot recommend a grant of a variance unless Petitioner is required to maintain a staff of eight to operate its facility around the clock. While a staff of eight does not meet the federally recommended level of 10-13 people, the Agency feels that eight persons can operate the facility efficiently and effectively.

The Board concludes that denial of variance would constitute arbitrary and unreasonable hardship. Petitioner has secured a competent supervisor in Mr. Neal and should not be required to incur additional expense as long as Mr. Neal progresses towards Class I certification. The Board has seen no reason to waive any training requirements for Mr. Neal and consequently relief in this matter will not address that issue. The federal regulations cited by the Agency appear to be germane to Petitioner's construction grant, but they are not relevant in evaluating a variance from Part XII of Chapter 3: Water Pollution. Consequently the Board will not condition relief on any minimum staffing level. Small communities such as Mt. Vernon should be allowed maximum flexibility in staffing and should only be held accountable for results.

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

ORDER

1. Petitioner is hereby granted a variance from Rule 1201 of Chapter 3: Water Pollution until May 1, 1981 or upon the termination of employment of Mr. Harvey Neal, or upon the employment by Petitioner of a Class I operator, whichever occurs first, provided that Petitioner's sewage treatment facilities shall be operated under the best practicable operation and

maintenance practices.

2. Petitioner's request for a variance from Rules 1202 and 1203 of Chapter 3: Water Pollution is hereby denied.
3. Within 45 days of the date of this Order, Petitioner shall execute a certification of acceptance and agreement to be bound to the terms and conditions of this variance. The 45 day period shall be held in abeyance if this matter is appealed. The certification shall be forwarded to the Illinois Environmental Protection Agency, Division of Water Pollution Control, Variance Unit, 2200 Churchill Road, Springfield, Illinois 62706 and shall read as follows:

CERTIFICATION

I (We), _____, having read and fully understanding the Order in PCB 79-226 hereby accept that Order and agree to be bound by all of its terms and conditions.

SIGNED _____
TITLE _____
DATE _____

4. The Agency's motion for leave to file its Recommendation 22 days late is hereby granted.

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 10th day of January, 1980 by a vote of 4-0.

Christan L. Moffett
Christan L. Moffett, Clerk
Illinois Pollution Control Board