

ILLINOIS POLLUTION CONTROL BOARD
March 6, 1980

VILLAGE OF RIVERTON,)
)
 Petitioner,)
)
 v.) PCB 79-268
)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

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

Petitioner filed its petition for variance from Sections 12 and 39 of the Illinois Environmental Protection Act (Act) and from Rule 962 of the Board's water regulations on December 14, 1979. On September 14, 1979, the Agency denied Petitioner a construction permit to build a sewer line in anticipation of a large housing development, apparently to be built by local resident Mr. Nino Giganti. The relevant water regulation, Rule 951(a), states that no construction of a new sewer may commence without the issuance of a permit unless excepted by Rule 951(b), which Petitioner is not.

Petitioner, however, seeks a variance from Rule 962, Standards of Issuance of all but experimental permits. This rule requires Petitioner to submit to the Agency adequate proof either that the sewer will be constructed so as not to cause a violation of the Act or the Board's water regulations or that Petitioner has been granted a variance. In either case, the project must conform to Agency-approved "design criteria" published pursuant to rule 967.

What the Agency alleges are its "design criteria" are its "Guidelines For Determination of Construct-Only Status Pursuant to Rule 951 of Chapter 3: Water Pollution Regulations of the Illinois Pollution Control Board, [etc.]" [WPC-5], filed March 3, 1977. WPC-5 concerns procedural requirements for construction design. Regardless of its applicability to issuance of construct-only permits, WPC-5 does not apply to Petitioner's request for variance from Rule 962.

In order to grant Petitioner a variance from Rule 962's standards for the Agency's issuance of a construct-only permit, Petitioner must allege and prove that requiring it to submit adequate proof to the Agency that the intended sewer line will be constructed so as not to cause a violation of applicable laws, and will conform to Agency "design criteria". imposes an arbitrary and unreasonable hardship upon Petitioner.

The Board does not favor granting variances from the Act authorizing the Board to conduct rulemaking and other procedures. Variance from Sections 12 and 39 of the Act is therefore denied.

Variance from Rule 962 is denied. No hardship can result from subjecting Petitioner to a duty to prove to the Agency that its intended construction project will not violate applicable law and will conform to Agency-approved design criteria. The case of a permit denial appeal is not before the Board.


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

Petition for variance is denied without predjudice.

IT IS SO ORDERED.

Mrs. Anderson abstains

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opiniin and Order were adopted on the 6th day of March, 1980 by a vote of 4-0.


Christan L. Moffett, Clerk
Illinois Pollution Control Board