

ILLINOIS POLLUTION CONTROL BOARD
July 11, 1986

CITY OF MENDOTA)
)
 Petitioner,)
)
 v.) PCB 85-182
)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

MICHAEL S GUILFOYLE, ATTORNEY AT LAW, APPEARED ON BEHALF OF THE CITY OF MENDOTA.

THOMAS DAVIS, ATTORNEY AT LAW, APPEARED ON BEHALF OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY.

OPINION AND ORDER OF THE BOARD (by R. C. Flemal):

This matter comes before the Board upon a Petition for Variance ("Pet.") filed December 10, 1985 by the City of Mendota ("Mendota"). Mendota seeks variance for a period of two years from 35 Ill. Adm. Code 306.304 so that it may continue to operate various bypasses.

On December 20, 1985 the Board ordered Mendota to submit additional information. Mendota filed an Addendum to its variance petition on February 6, 1986. The Illinois Environmental Protection Agency ("Agency") filed its Recommendation ("Rec.") in this case on March 11, 1986, recommending that Mendota's request for variance relief be denied. Hearing was held in this matter on April 22, 1986 in Mendota, Illinois.

For the reasons developed below, the Board finds it cannot grant the variance relief requested by Mendota and must therefore deny the requested relief.

BACKGROUND

Mendota owns and operates a wastewater treatment plant and sanitary sewer system which serve approximately 7,000 persons. The plant discharges to Mendota Creek, which flows into the Little Vermillion River. The plant has a design maximum flow of 2.8 mgd, and can provide tertiary treatment for 1.8 mgd (R. at 98). Two excess flow lagoons are also located at the plant. Excess flows to the plant are bypassed to the "west" lagoon, then to the "east" lagoon (R. at 50). The effluent from the ponds discharges to the Little Vermillion River (without chlorination) and average 20 mg/l of five day biochemical oxygen demand ("BOD₅") and total suspended solids ("TSS"), rarely exceeding 30 mg/l for either parameter (Rec. at 2).

Mendota upgraded its system in 1977 for the intended purpose of reducing infiltration and eliminating sewage bypassing (Pet., par. 1). Bypassing continues to occur, however, at seven locations (described below). Mendota contends that the engineering firm utilized by Petitioner for the prior project severely underestimated the volume of infiltration into the system (R. at 18). More specifically, Mr. G. Richard Spencer, one of Mendota's present engineers, testified that his calculations show that for a five-year storm, 11,389,000 gallons per day are delivered to the plant (R. at 84). The prior engineers estimated the expected flow to the plant during a five-year storm to be 5.3 mgd, and allegedly made inadequate modifications to the system based on that estimate. Petitioner alleges that without the bypasses operating, sewage backs up into the basements of approximately 75 residences eight to ten times per year during precipitation events (R. at 88-90).

Mendota was given a prior variance from 35 Ill. Adm. Code 306.304 by the Board on June 30, 1983. That variance expired on September 30, 1984, and no effort was made by Mendota to extend or renew the earlier variance.

DESCRIPTION OF THE BYPASSES

Bypasses occur at seven locations in Mendota's system. Outfall 001 is located at the sewage treatment plant and discharges to Mendota Creek. Outfall 002 is located at East Sixth Street in the city, and is an automatic bypass which discharges directly to the Little Vermillion River. Outfall 003 is a manually operated bypass located at the east pump station, and it also discharges directly to the Little Vermillion River. Outfall 004 is a gravity discharge located at First Avenue and Ninth Street, and discharges to First Avenue Creek, a small tributary to the Little Vermillion River. Outfall 005 is another gravity discharge and is located at Oak Court. It discharges to Mendota Creek. Outfall 006 is a 12-inch pipe which extends from the east lagoon to the Little Vermillion River. Outfall 007 is a bypass discharge that occurs to the Little Vermillion River as a consequence of flow across the top of the dikes located at the west lagoon. R. at 118.

PROPOSED IMPROVEMENTS TO SYSTEM

Mendota has indicated several changes it has recently made, or intends to make in the near future, to its system. These improvements are expected to effect a slight improvement in the operation of the system, but are expected to neither eliminate the perceived need for the bypasses nor reduce the magnitude of the bypasses in a significant way.

Mendota states that on April 21, 1986, it installed a recirculation line running from the east lagoon to the plant's tertiary treatment equipment. The recirculation line acts to keep the lagoon at a low depth in dry weather in order to enable

the lagoon to handle higher volume in wet conditions (Pet., par. 7). The line had formerly run from the lagoon to the head of the plant. The prior set-up of the line caused some difficulties related to overloading of the activated sludge system, thus the line was rerouted as water coming from the east lagoon is believed to be of sufficiently high quality to require only tertiary treatment and chlorination (R. at 97).

Petitioner also intends to install a motorized gate valve at the head of the plant. This valve would replace the manually operated one currently in place, and would function to control flows into the plant during periods when an operator is not on duty. Such control is necessary to prevent the biological processes at the plant from being "flooded", and thereby rendered ineffective, during periods of rain. Installation of the motorized gate valve is expected to cost \$30,000 (R. at 99-100).

Testimony given by both Arthur Fry, Head of Operations at the Mendota plant, and Mr. Spencer indicates that Mendota is going to correct problems of infiltration in a few small areas (R. at 70). This work will not be sufficient to remove Petitioner's need to bypass (R. at 121).

ENVIRONMENTAL IMPACT

Mendota has submitted some data indicating the amounts of various parameters contained in effluent discharged during bypass events between May, 1985 and March, 1986. This data is contained in Exhibit E, and shows the following:

Outfall 001

(NO DATA)

Outfall 002

	<u>D.O.</u>	<u>pH</u>	<u>SS</u>	<u>BOD</u>
November 11, 1985	8.6	7.7	18	15
November 19, 1985	8.6	7.6	15	25
November 20, 1985	Bypass occurred, but no sampling done			
November 21, 1985	"	"	"	"
November 22, 1985	"	"	"	"
December 1, 1985	8.8	7.2	13	21
December 2, 1985	Bypass occurred, but no sampling done			
December 3, 1985	"	"	"	"
December 4, 1985	"	"	"	"

Outfall 003

	<u>D.O.</u>	<u>pH</u>	<u>SS</u>	<u>BOD</u>
October 21, 1985	4.8	7.6	24	37
November 19, 1985	8.2	7.3	29	28
November 20, 1985	Bypass occurred, but no sampling done			
November 21, 1985	"	"	"	"
November 22, 1985	"	"	"	"
December 1, 1985	8.8	7.2	31	23
December 2, 1985	Bypass occurred, but no sampling done			
December 3, 1985	"	"	"	"
December 4, 1985	"	"	"	"
December 5, 1985	"	"	"	"
December 6, 1985	"	"	"	"
February 4, 1986	9.6	7.5	24	26

Outfall 004

	<u>D.O.</u>	<u>pH</u>	<u>SS</u>	<u>BOD</u>
November 19, 1985	8.1	7.5	10	30
November 20, 1985	Bypass occurred, but no sampling done			
December 1, 1985	9.4	7.6	23	31

Outfall 005

	<u>D.O.</u>	<u>pH</u>	<u>SS</u>	<u>BOD</u>
December 1, 1985	9.7	7.6	12	28

Outfall 006

	<u>D.O.</u>	<u>pH</u>	<u>SS</u>	<u>BOD</u>
May 16, 1985	7.8	7.6	34	24
October 21, 1985	8.7	7.5	10	4
November 1, 1985	9.0	7.1	9	7
November 10, 1985	9.9	7.7	11	9
November 18, 1985	8.1	7.4	8	14
December 1, 1985	10.4	7.4	10	20
December 13, 1985	10.2	6.9	12	10
February 4, 1986	9.6	7.5	13	6
March 5, 1986	13.6	7.6	13	16
March 18, 1986	11.2	7.8	28	12
April 1, 1986	13.0	7.4	10	9

Mendota has submitted no flow data, however, for any of the bypasses, nor for Mendota Creek and the Little Vermillion River. Such data is critical to the determination of the degree of environmental impact caused by any given discharge(s). Since such data is not present here, the Board finds it difficult to

determine the environmental impact to the receiving streams of the Petitioner's bypasses.

HARDSHIP

Mendota contends that denial of the variance relief it requests would constitute an arbitrary or unreasonable hardship to the city. Petitioner has presented a good deal of information detailing the seriousness of its financial condition. For example, Exhibit B is a comparison of Mendota's sewer rates with the average rates of a surveyed group of 36 Illinois communities. In every rate category, the rate charged by Mendota exceeded the survey average. In addition, due to the loss of revenue sharing Petitioner anticipates a budget deficit of \$90,000 over the next 3-4 years* (R. at 6). Moreover, Mendota already has the fifth highest tax rate in LaSalle County, yet is ranked 34th among 37 LaSalle County communities on the basis of per capita income (R. at 6-7).

Mendota's engineers have proposed a \$1.6 million plan to upgrade the system, but implementation of that plan would not eliminate bypassing within the system (R. at 88) although it would reduce the frequency of bypassing to 2-3 times per year (Id.). To eliminate bypassing entirely, Mendota contends the sewer system would have to be completely replaced, at a cost in excess of \$14 million. The city believes that the rates for sewer service would increase by 67% if the \$1.6 million upgrade was undertaken, while the \$14 million plan, if adopted, would cause rates to increase by 670%.

COMPLIANCE PLAN

Mendota asserts that it cannot come into compliance as a consequence of any action undertaken during the pendency of the proposed variance (R. at 121-2). Rather, Mendota proposes to use the period of the variance to prepare a proposal for site-specific relief (R. at 122). The Board has previously held that contemplation of a proposal for regulatory relief does not constitute a compliance program (Citizens Utilities Company of Illinois v. EPA, PCB 85-95, April 10, 1986). As such, Mendota has not proposed a compliance plan of any sort, although such a plan is required by 35 Ill. Adm. Code 104.121(f).

CONCLUSION

The Board finds that the Petition for Variance filed by Mendota in this matter must be denied. The Board certainly understands the financial difficulties currently being

*It is not clear from the transcript whether this amount refers to an annual deficit over the next 3-4 years, or a cumulative deficit for that period.

experienced by the Petitioner, and empathizes with the worries and frustrations that must result as a consequence of the situation. The Board is not able to grant variance relief in this case, where the relief is not conditioned upon identification of and commitment to a compliance plan.

The Board has, in certain instances, granted short term variances so that information necessary to formulate and schedule a compliance plan can be gathered. The Board does suggest that Mendota might wish to continue to explore efforts, short of complete sewer replacement, which might allow for the reduction or elimination of surcharging in its sanitary sewer system. These could include, but need not necessarily be limited to, disconnection from the sanitary sewer of downspouts and sump pumps, repair of leaky manholes, and grouting or lining of existing sewers. In the event that Mendota determines that it wishes to consider this course, Mendota would be free to refile for variance for the term necessary to complete the compliance program information gathering.

If Mendota believes that the circumstances regarding its sewer system are such that compliance with Board regulations simply cannot be achieved, the Board suggests that Petitioner continue to consider filing a proposal for site-specific regulatory relief. The Board notes that in making this suggestion it gives no assurances regarding the possible outcome of such a proceeding. The Board is simply indicating that the site-specific process is designed for situations where compliance cannot be achieved in an economically reasonable manner.

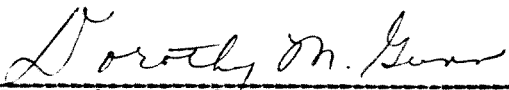
ORDER

The December 10, 1985 Petition for Variance filed by the City of Mendota is hereby denied.

IT IS SO ORDERED.

Board Member Jacob D. Dumelle dissented.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 17th day of July, 1986, by a vote of 5-1.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board