ILLINOIS POLLUTION CONTROL BOARD
July 19, 1984

VILLAGE OF LOMBARD,
Petitioner,
v. PCB 83-147
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,
Respondent.

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

In its Order of April 16, 1984 noting the absence of specified exhibits from the Board's files, the Board invited the filing of duplicate exhibits, and stated that "[u]pon completion of the record, the Board will enter an Order affirming, reversing, or otherwise amending its March 21, 1984 Opinion and Order" granting variance. The record is now complete save possibly for Agency exhibits which the Agency and the Village stipulate "are unidentifiable and insignificant at this time" (Pet. Production of Resp. Ex. from Dec. 7, 1983 Hearing, filed May 31, 1984, p. 2 and Agency Correction and Clarification, filed June 12, 1984), and for Citizen's Exhibit 1, Linda Sullivan's photograph. No objections have been made by any person to the duplicate exhibits as filed. This Supplemental Opinion represents the Board's reconsideration of this matter on its own motion, as well as the Board's determinations concerning motions filed after April 16.

The Village's April 25 motion for clarification of the term "Phase II" is denied, insofar as it requests incorporation into the record and the Order of the map/drawings filed June 10. The term "Phase II" as used by the Board was intended to have the meaning given it by the parties throughout the record: completion of the Northern Area Sanitary Sewer Project, Phase II, the purpose of which is to separate sanitary and storm sewers affecting about 200 acres of the 54 inch combined sewer area, with an estimated completion date of December 31, 1984 and estimated to cost $1,582,000 (December 1983 R. 173-177, Pet. Br. 6).

While the term "Phase II" was used in regard to other projects, the Board did not view this as a potential source of

confusion. The record indicates that the Grove Street and Central Area, Phase II, Storm Sewer projects have been completed. The remaining two projects affecting the 54 inch area, namely the Glenview and St. Charles Storm Project and the rebuilding of 43 manholes, were to be completed prior to January 1, 1984 (Dec. 1983 R. 215-233; Incorporated Record PCB 82-152, Pet. Ex. "I", Attach. Ex. "C"). Although there were some disputes over the acres involved, there is no indication in the record that the projects listed above have not been completed, except for an ambiguous comment by Mr. Fyler referring to the manhole project (Jan. 4, 1984 R. 38). Therefor, based on the assumed completion of these other projects as mandated by court order, the Board ordered completion of the remaining Phase II sewer system rehabilitation project as described in the record, namely the Phase II Northern Area Sanitary Sewer Project.

The Board will not address all of the points raised by the intervenors' April 23 & 24 motions for reconsideration and modification as they, in the main, reassert arguments previously presented to the Board. At the risk of oversimplifying the evidence presented by the parties, the Board notes that, in general, the Village focused on the environmental impact of one project, primarily asserting the benefits to the 54 inch combined sewer area if the stormwater flow from the 7.16 acres is diverted to the Grove Street Storm Sewer (see esp. Jan. 1984, R. 167-194). On the other hand, the intervenors' testimony and arguments in significant measure address the overall considerations associated with the existing restricted status, including the potential problems caused in the Grove Street Storm Sewer by the diverted storm flow.

Regarding the effects of the added sanitary flow and the diversion of stormwater from the property on the 54 inch combined sewer, the essence of the dispute seems to be the value of trading-off an admitted reduction in the frequency and duration of sewer backups -- considered "minuscule" by the intervenors (e.g. Jan. 1984 R. 118, 124) -- for an admitted increase in the level of BOD and suspended solids (and, presumably the bacterial load) -- considered not measurable by the petitioner (e.g. Jan. 1984 R. 124, 173).

Intervenor Allen felt that no variance should be granted even if Phase II were completed, because his analysis indicates that further system rehabilitation will be needed before there is adequate relief from the flooding and surcharging (Jan. 1984 R. 111-114, Allen Exh. 1 and Brief).

The Village asserted that, by the end of 1984, assuming the completion of Phase II, 588 acres or 75% of the 54 inch combined sewer area will be separated (Dec. 1983 R. 176). However, the Village also indicated that even if Phase II is completed by December 31, 1984, the lifting of restricted status is not

assured and, in any event, is not likely to happen quickly (Dec. 1983, R. 69, Jan. 1984, R. 223-244). Lombard's Director of Planning and Zoning does not believe that, especially with the loss of the anchor store, the downtown can survive until restricted status is lifted without some type of joint public/private development. (Dec. 1983, R. 67, Feb. 1984, R. 34.)

In analyzing the evidence as a whole, the Board has determined that, when combined sewers are surcharging and backing up under storm conditions to the degree evident in the 54 inch combined sewer service area, neither the stormwater diverted nor the sewage added from this project are going to have more than minimal effect--positive or negative--on the volume or concentration of the flows entering the basements. However, recognizing the non-self-imposed economic hardship to the community, the Board decided to grant variance while at the same time avoiding a de minimus trade-off in basement backups of volume for concentration and, overall, an uncertain environmental impact. The variance conditions, including the completion of Phase II sewer rehabilitation, were designed to give the Village a measure of relief in allowing project hook-ons, but only after completion of long-discussed work expected to provide significant environmental improvements.

In reconsidering the evidence and arguments in this matter, the Board is not persuaded that its original determination was in error. For the reasons expressed above, as well as those expressed in the March 21, 1984 Opinion, the Board hereby affirms grant of variance, with its quid pro quo conditions. However, in response to a comment in the Allen April 24 motion, the Board will make one clarifying modification in paragraph 5 (to be renumbered 1E) of its Order to reflect common usage in the record: deletion of the word "interceptor," and its replacement with the word "combined." (To avoid confusion, the entire Order as entered March 21 and here modified, will be set forth at the conclusion of this Supplemental Opinion.)

Finally, there are three intervenors' motions requiring disposition. On July 5, 1984, Mr. Allen moved for disclosure of any written or verbal contacts between Board members and parties in this action or their attorneys, first generally, and then specifically regarding the decision date in this action. This is not a motion on which the Board collectively can rule, since a) the Environmental Protection Act does not provide the majority of the Board any authority to, by vote, require action by individual Board Members, and b) the requested disclosure is nowhere mandated in Section 101.121. The motion must therefore be stricken as inappropriate for collective Board action.

The remaining two motions concern intervenors' requests for reimbursement by the Village for costs related to provision of

exhibits. On May 1, Mrs. Allen requested reimbursement of $2.60 for the xeroxing of Citizen's Group Exhibit 3, a duplicate of which was filed the same day in response to the invitation in the Board's Order of April 16. On May 29, Mr. Fyler requested reimbursement for a) time, mileage, parking and phone calls related to the delivery to the Board of a copy of Fyler Ex. 1 at the Hearing Officer's March 20 direct request (Board records indicate that the March 21 date cited in the motion is in error), and b) time, mileage, and copying of a duplicate of this exhibit in Lombard on April 17 "to dispute [a] claim" of unavailability between Mr. Allen and the Village Attorney. The motions are denied, insofar as reimbursement from the Village is concerned, as the Board questions its statutory authority to require payment of these costs under these circumstances.

However, the Board must note that both Mrs. Allen and Mr. Fyler incurred out-of-pocket expenses to replace materials which they had correctly entrusted to an agent/employee of the Board. The Board will therefore, on its own motion, itself reimburse Mrs. Allen for the claimed $2.60. As to Mr. Fyler's request, the expenses he voluntarily incurred April 17 for his own private purposes are not reimbursable. Concerning the claim for the March 20 delivery, made at the request of the Hearing Officer, the Board must disallow the $30.00 claimed for time since a "contractual service" agreement specifying a $10 per hour personal service charge was not authorized or executed by the Board. The Board will, however, itself reimburse Mr. Fyler $16.50 for his out-of pocket expenses of $4.50 parking, $0.75 phone calls, and $11.25 mileage (the claimed 50 miles at the authorized state rate of 22.5¢ per mile rather than the claimed 25¢ per mile).

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

ORDER

1. The Village of Lombard is hereby granted a variance from 35 Ill. Adm. Code 309.241 (a) subject to the following conditions:

    A. The developments shall be restricted to two parcels of land as described in Exhibits A and B of the Variance Petition, which consist of approximately one-half of the area bounded by the Lombard streets of Lincoln, Grove, Park and St. Charles. This variance authorizes the Illinois Environmental Protection Agency ("Agency") to issue construct-only permits for development upon Lombard's submittal of applications and acceptance of this variance. Operating permits shall not be issued until all of Phase II sewer system rehabilitation is completed and the Agency certifies that it is completed

and operational. Storm water from the two parcels of land in question shall be diverted from the 54 inch combined sewer line to the separate storm sewer line prior to issuance of an operating permit.

B. The development of the two parcels of land shall be restricted to a total design population equivalent of 483.

C. The development will strictly adhere to Lombard Storm Water Ordinance, No. 2231, which limits the runoff rate to 0.1 inches per hour.

D. Any water diverted to the Grove Street Storm Sewer shall not cause or contribute to basement or surface flooding.

E. If any water surcharges from the Grove Street Storm Sewer, such water shall not be allowed to flow into the 54 inch combined sewer.

2. Within 45 days of the date of this Order, the Village of Lombard shall execute a Certification of Acceptance and Agreement to be bound to all terms and conditions of this variance. Said Certification shall be submitted to the Agency at 2200 Churchill Road, Springfield, Illinois 62706. The 45-day period shall be held in abeyance during any period that this matter is being appealed. The form of said Certification shall be as follows:

CERTIFICATION

I, (We) ________________________________, hereby accept and agree to be bound by all terms and conditions of the Order of the Pollution Control Board in PCB 83-147, March 21, 1984, as amended July 19, 1984.

____
Petitioner

____
Authorized Agency

____
Title

____
Date

3. The Village's April 25, 1984 motion for clarification, as supplemented June 10, 1984, is denied.

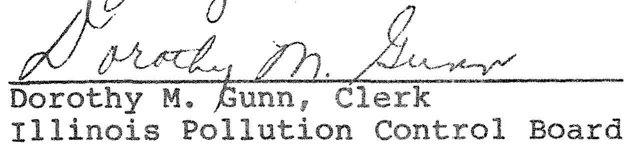
4. The Allen July 5, 1984 motion for diclosure is stricken as inappropriate for collective Board action.

5. The respective Allen and Fyler motions of May 1 and May 29, 1984 for reimbursement from the Village are denied. However, the Board itself will reimburse Mrs. Allen in the amount of $2.60 and Mr. Fyler in the amount of $16.50 for out-of-pocket expenses resulting from provision of duplicate exhibits.

IT IS SO ORDERED.

B. Forcade dissented and J. D. Dumelle concurred.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Supplemental Opinion and Order was adopted on the 19th day of July, 1984 by a vote of 5-1.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board