

ILLINOIS POLLUTION CONTROL BOARD  
November 1, 1979

JARVIS, DE LOACH & )  
JOBST PARTNERSHIP, )  
 )  
Petitioner, )  
 )  
v. ) PCB 79-148  
 )  
ENVIRONMENTAL PROTECTION AGENCY, )  
 )  
Respondent. )

OPINION OF THE BOARD (by Mr. Dumelle):

Petitioner requested a variance from Rule 962(a) of Chapter 3: Water Pollution. The Agency recommended that the variance be granted. No hearing was held. On October 18, 1979 the Board granted the variance. This Opinion supports the Board's Order.

Petitioner has requested relief so that sewer service can be extended to a proposed 50 unit housing development for the elderly in the City of Fairfield. Construction and operating permits were denied by the Agency because Fairfield is presently on restricted status. Petitioner anticipates that its development will contribute an average sewage flow of 2100 gallons per day. Petitioner claims that this flow will be offset by the elimination of housing units which presently exist on the site and by virtue of the fact that many of the development's elderly inhabitants already live in Fairfield. Petitioner points to other reductions in water usage in Fairfield which should reduce overall sewage flow by over 10%.

The Fairfield sewer system is subject to excessive infiltration and inflow. The Fairfield sewage treatment plant also needs upgrading with tertiary treatment and ammonia nitrogen removal facilities. Sewer rehabilitation is expected to be completed by September, 1980 and facility upgrading by April, 1982. Petitioner admits that these facilities have not been operated properly in the past but claims that a new properly certified operator has greatly improved the situation.

Petitioner states that this development was authorized by the Wayne County Housing Authority after an urgent need had been demonstrated. If Petitioner is not allowed to connect to the Fairfield sewer system, it will face increased development costs which would not be covered by Federal funds from the Department of Housing and Urban Development.

These increased costs would include \$30,000 in capital costs and \$6,000 per year for operation and maintenance of a private wastewater treatment system.

The Agency feels that some of Petitioner's estimated flow offsets are suspect but admits that approximately 30% of the residents of the development now live with their families in the locale or in houses which will be razed. While the Agency believes that the variance should be granted, it feels that a grant should be conditioned on compliance by Fairfield with specific increments of progress in the city's construction grant schedule. As support for this contention the Agency cites the Board's prior mandate in Trust #182, Crawford County State Bank, Robinson, Illinois, (Fairfield Lamplight Manor Apartment Complex), and City of Fairfield v. EPA, PCB 76-244, 25 PCB 573, May 26, 1977. That case also involved relief from restricted status to provide for construction of an apartment complex. The Agency has asked that the Board repeat its prior Order that Fairfield be required to operate its facilities with maximum efficiency. Although the Agency has evidence that the condition of the receiving stream has deteriorated in recent years, and that Fairfield has been unable to meet any interim effluent limitations, the hardship to the Fairfield community from denial of a variance outweighs these shortcomings.

The Board concludes that denial of a variance in this instance would constitute arbitrary or unreasonable hardship. While Petitioner should have known about the long standing designation of restricted status, this necessary housing development should not be jeopardized. The Board has chosen not to require Fairfield to comply with its construction grant schedule as a condition to this relief because the city was never joined formally as a party in this matter. The Agency's reliance on the Board's decision in PCB 76-324 is misplaced since Fairfield was joined with its consent in that matter. The Board is confident that Fairfield will pursue its obligations to resolve its sewage treatment deficiencies.

The standard certification clause was omitted from the Board's final Order because no conditions or limitations were attached to the relief.

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

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion was adopted on the 12<sup>th</sup> day of November, 1979 by a vote of 4-0

  
Christan L. Moffett, Clerk  
Illinois Pollution Control Board