

ILLINOIS POLLUTION CONTROL BOARD  
January 22, 1981

BANK OF DeSOTO AND VILLAGE OF DeSOTO, )  
 )  
 ) Petitioner, )  
 )  
 ) v. ) PCB 80-219  
 )  
 ) ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, )  
 )  
 ) Respondent. )

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

This matter comes before the Board on the petition for variance filed December 4, 1980 by the Bank of DeSoto (Bank) and the Village of DeSoto (Village), in Jackson County. Petitioners seek variance from Rule 962(a) of Chapter 3: Water Pollution, in order to receive authorization to continue sewer service to four homes connected to a sewer extension which had been constructed and operated without permits, and to service one additional home to be connected to said sewer. The Agency filed its Recommendation in support of variance with conditions on December 31, 1980. Hearing was waived, and none was held. This petition is being given expedited consideration as requested at the time of filing.

The "unpermitted" sewer extension at issue here is located in River Bend Estates Subdivision in DeSoto, and is connected to the Village's sewage treatment plant, which has been on restricted status since July 28, 1977. The improper construction and operation of this sewer was the subject of an enforcement action before the Board which was settled by the parties with the Board's approval in IEPA v. Village of DeSoto and Clifford Hale, PCB 79-24, 37 PCB 193, January 24, 1980. According to the terms of the stipulated settlement, Clifford Hale, as the River Bend developer and person who had constructed the sewer, was to have petitioned for variance for the four already-connected homes on or before February 23, 1980, and to have corrected deficiencies in the sewer. As Mr. Hale has failed to perform as agreed, the Village has filed this petition and appears to have agreed to upgrade the sewer. The Bank, as well as the Village, petitions for variance to connect a fifth home which had been constructed but not connected to the sewer at the time of the enforcement action.

Each home is estimated to discharge approximately 300 gallons per day (gpd) of domestic sewage to the sewer. As four homes are already connected, the total increase in loading would therefore be about 300 gpd. Although the Village's plant remains on

restricted status, the Village is currently in the Step 1 phase of the USEPA construction grants program, and may be eligible for Step 2 funding by the Spring of 1981. The Village's engineer indicated that completion of plant upgrading could be achieved by January 1, 1984, depending on timely availability of grant funds. The Agency believes that the plant's restricted status will improve the Village's chance of getting Step 3 construction grant monies, in spite of its high priority number of 757.

Were variance denied, each homeowner could install an individual septic system at a cost of about \$2500. However, the Village notes, upon completion of plant construction and lifting of restricted status, the homeowners could be required to connect to the Village sewer system. It is asserted that it would be arbitrary and unreasonable to deny variance to the owners of the 4 homes already connected, as they have had no control over this situation. While the buyer of the fifth home was aware of the lack of permit and restricted status, it is stated that he acted in reliance on the settlement in PCB 79-24, expecting variance to be applied for and supported by the Agency as agreed.

The Agency, as it stipulated in PCB 79-24, supports grant of variance. Although the plant has had problems, the Agency believes that it is being properly operated and maintained so as to produce the best quality effluent possible from that facility.\* The Agency does however believe that variance should be conditioned on performance of the remedial work outlined in the PCB 79-24 agreement, and correction of a certified operator contract deficiency of which the Village had received prior notice.

Under all the circumstances presented here, the Board finds that denial of variance would be arbitrary and unreasonable. Variance from Rule 962(a) of Chapter 3 is hereby granted. The grant of variance will minimize the environmental impact and at the same time relieve the homeowners' potentially severe economic burden, since the Board grants variance subject to the conditions suggested by the Agency for the expeditious upgrading by the Village of the sewer extension and the treatment plant and its operations, including the corrections outlined in the PCB 79-24 stipulation.

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

#### ORDER

1. Petitioners, the Village of DeSoto and the Bank of DeSoto, are hereby granted a variance from Rule 962(a) of Chapter

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\*The Board notes that the Agency's Recommendation at p. 4 states that the Village is not currently meeting its NPDES permit's interim discharge "limits of 40 and 80 mg/l for BOD<sub>5</sub> and Suspended Solids. These limits are higher than any established in Rule 404, which maximum limits are 30 and 37 mg/l.

3: Water Pollution to permit issuance of an operating permit for an "unpermitted" sewer extension which serves four houses on Pine Wood Court in DeSoto, Illinois which are currently connected to the "unpermitted" sewer extension and to allow connection of the fifth house to the same sewer extension in River Bend Estates Subdivision, subject to the following conditions:

- a. Within 60 days of the date of this Order, the Village of DeSoto shall submit as-built plans for the "unpermitted" sewer extension in River Bend Estates, including the connections to the five houses.
- b. As expeditiously as possible, the Village of DeSoto shall make the corrections to the present sewer system in the River Bend Estates Subdivision outlined in the settlement agreement in PCB 79-24 which is incorporated by reference herein as if fully set forth.
- c. The Village of DeSoto shall submit quarterly reports updating its progress on improvements to the "unpermitted" sewer extension in River Bend Estates Subdivision. The first report shall be due within 60 days of the date of this Order, and the reports shall be sent to the following addresses:

Environmental Protection Agency  
 Division of Water Pollution Control  
 Variance Unit  
 2200 Churchill Road  
 Springfield, IL 62706

Environmental Protection Agency  
 Marion Regional Office  
 DWPC -- Region 7  
 2209 West Main Street  
 Marion, IL 62959

- d. The Village of DeSoto shall continue to diligently pursue upgrading the DeSoto sewage treatment plant and sewer system through the construction grants program.
- e. The Village of DeSoto shall employ the best possible operation and maintenance practices for the DeSoto sewage treatment plant and sewer system to achieve the optimum effluent quality possible from the existing facility, and to eliminate any and all sewage overflows.
- f. The Village of DeSoto shall submit a contract for Agency approval which meets the certified operator requirements of Part XII of Chapter 3.

2. Within 45 days of the date of this Order, each Petitioner shall execute and forward to the Illinois Environmental Protection Agency, Variance Unit, 2200 Churchill Road, Springfield, IL 62706, an executed Certification of Acceptance and Agreement to be bound by all conditions of the variance. The forty-five day period herein shall be stayed during judicial review of this variance pursuant to Section 41 of the Environmental Protection Act. The form of said certification shall be as follows:

CERTIFICATION

I, (We), \_\_\_\_\_, having read the Order of the Illinois Pollution Control Board in PCB 80-219, dated \_\_\_\_\_, understand and accept the said Order, realizing that such acceptance renders all terms and conditions thereto binding and enforceable.

\_\_\_\_\_  
Petitioner


\_\_\_\_\_  
By: Authorized Agent

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

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 22<sup>nd</sup> day of January, 1981 by a vote of \_\_\_\_\_.

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