

ILLINOIS POLLUTION CONTROL BOARD
October 4, 1979

CORPORATE WEST DEVELOPMENT, INC.,)
and COUNTY OF DUPAGE,)
)
Petitioners,)
)
v.) PCB 79-163
)
ENVIRONMENTAL PROTECTION AGENCY,)
)
Respondent.)

OPINION OF THE BOARD (by Mr. Dumelle):

Petitioner Corporate West Development, Inc. (Corporate West) requested a variance from Sections 12 and 39 of the Act and Rules 951, 952, and 962 of Chapter 3: Water Pollution to construct and operate a sewer connection from a proposed hotel site to the DuPage County Department of Public Works Lisle-Woodridge sewage treatment plant. This plant has been placed on restricted status. The Agency recommended that a variance be granted to allow construction of the sewer extension with operation conditioned on a number of factors. No hearing was held. At an emergency meeting on September 13, 1979 the Board granted a variance to construct and operate the requested extension subject to conditions. This Opinion supports the Board's Order.

On November 20, 1975 the Agency issued a permit to Corporate West which authorized the construction and operation of a sewer extension to carry 42,000 gallons of wastewater per day. By July 28, 1977 Corporate West had obtained permits from the Village of Lisle for two office buildings which consumed 6,000 gallons of the 42,000 gallon allocation. On October 5, 1978 Corporate West entered into a contract with Fireside West Development Company (Fireside) to sell 15 acres of property to build a hotel and restaurant facility. The contract included a warranty that adequate sewerage would be available. On May 31, 1979 the Agency notified DuPage County (the county) that the Lisle-Woodridge plant was on restricted status and had no additional capacity. On July 24, 1979 Corporate West was informed by the Agency that an additional permit would be required to construct and operate the connecting lines for the hotel. Since the plant was on restricted status, this permit could not be issued.

Corporate West and the Agency disagree on whether or not an additional permit is needed, but this is not a permit denial appeal. Corporate West has requested a variance because Fireside will not proceed to a closing until the

matter is resolved. Fireside must execute a loan commitment in the near future and the hotel franchisor needs a demonstration that all necessary financing has been obtained. Corporate West needs a large payment from Fireside (\$1.1 million) by the end of this year to avoid excess interest payments on an outstanding loan of \$6 million. Corporate West claims that construction, already underway, must continue so that the hotel is under roof before winter makes outdoor work impractical.

Corporate West admits that although the Lisle-Woodridge plant " . . . is not necessarily hydraulically overloaded . . . " the plant's discharge has recorded violations of its NPDES permit. Corporate West claims that all hydraulic and organic overloadings will be corrected by the construction of an interim expansion of 1.0 million gallons per day (MGD) and a permanent expansion of 0.4 MGD by the county within the next year and a 0.3 MGD interim expansion by the Village of Lisle. In addition Corporate West points to additional plans by the county to permanently expand the plant and the fact that an additional 0.032 MGD from the hotel will have no measurable impact on the 6.94 MGD plant.

Corporate West's hardship in this matter consists of economic losses it would suffer if the project is placed in jeopardy. Corporate West claims that this hardship is rendered arbitrary and unreasonable when it is balanced against reliance on a previously issued permit and the fact that projected expansions may precede the completion of the hotel.

In its Recommendation, the Agency claims that Corporate West has never obtained connection permits for the two office buildings. The Agency first notified the county of pending restricted status on April 25, 1979 and actual designation on May 31, 1979 pursuant to Rule 604(a) of Chapter 3: Water Pollution. The Agency's latest data show that from July 12 to July 31, 1979 the flow from the plant averaged 7.16 MGD, indicating hydraulic overloading. The Agency believes that outstanding permits exist which would authorize an additional 1.7 MGD. The Agency cites discharge monitoring reports which show that both the Lisle and Woodridge plants have exceeded NPDES standards for BOD, Suspended Solids, and Ammonia Nitrogen consistently from August, 1978 through June, 1979. The Agency is aware of the county's commitment to expand the Woodridge plant with an additional 1.4 MGD by September 15, 1980 but has not been advised of any plans by Lisle.

The Agency recommends that a variance be granted which would allow construction of the sewer lines but that operation be conditioned upon: 1) an order from the Board directing the county to complete the 1.4 MGD expansions and any other necessary expansions and, 2) a similar order from the Circuit Court for the 18th Judicial District in pending litigation. The Agency also asks that this variance be

limited to the connection from the proposed hotel and that variance relief from Rules 951 and 952 be dismissed.

In a Response, Corporate West claims that the Agency's requested conditions are unreasonable on three counts. First, it has no control over the actions of the Circuit Court. Second, any additional variance requests should be handled by the Board when they arise. Third, financing may be withheld if a cloud remains over Corporate West's or Fireside's right to operate the hotel sewer connection.

The Board concludes that denial of a variance would constitute arbitrary or unreasonable hardship. Corporate West appears to have proceeded in good faith reliance on a 42,000 gallon per day allocation made in 1975. Since the contribution from the hotel is small in relation to the total plant flow and since the county is proceeding to remedy the plant's shortcomings, the chance for any measurable environmental damage appears slight. The Board sees no reason to tie this matter to any future variance petitions since they can be evaluated individually at a later date. The county was named as a Respondent throughout this proceeding, but has never been joined formally. The Board has named the county as a Petitioner in the Order because its interests are more closely aligned with Corporate West's than with the Agency's. The county has been ordered to perform the necessary expansions and operation of the sewer connection is contingent upon a similar order from the circuit court because the Board was advised at its emergency meeting that the county had agreed to this action. In general, the Board is extremely reluctant to condition its order upon a court action with which it is not familiar. Similarly, Corporate West stated its agreement with these actions. The Board felt it would be inappropriate to require the county to execute a certification because time was of the essence.

The Board's Order has not addressed Petitioner's requests for relief from Section 12 of the Act since a variance from Rule 962 renders statutory relief unnecessary. Relief from Section 39 and Rules 951 and 952 are similarly not addressed since there has been no showing that Corporate West should not be required to comply with those permitting procedures.

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 4th day of October, 1979 by a vote of 4-0.


Christan L. Moffett, Clerk
Illinois Pollution Control Board