

ILLINOIS POLLUTION CONTROL BOARD
March 30, 1978

AMERICAN DEVELOPMENT CORPORATION,)
)
 Petitioner,)
)
 v.) PCB 77-296
)
 ENVIRONMENTAL PROTECTION AGENCY,)
)
 Respondent.)

OPINION AND ORDER OF THE BOARD (by Mr. Young):

This matter comes before the Board on a Petition for Variance filed on November 16, 1977, by the American Development Corporation (ADC) seeking relief from Section 39 of the Environmental Protection Act (Act) and from Rule 962(a) of the Pollution Control Board Rules and Regulations, Chapter 3: Water Pollution (Regulations) for the construction and operation of a sanitary sewer connection to serve a proposed housing project for the elderly in the City of Effingham. On February 7, 1978, the Environmental Protection Agency (Agency) filed a Recommendation to grant a variance from Rule 962(a) of Chapter 3. No public hearing was held; hearing was waived by Petitioner in an Amended Petition on January 6, 1978.

The Petitioner requests a variance to allow its proposed housing project to connect with the Effingham sewage treatment plant which was placed on restricted status on February 20, 1976 (Pet. p2). The American Development Corporation has secured a 9-acre parcel of land suitably rezoned in Effingham, Illinois, where it plans to construct a 3-story building containing 113 rent-subsidized apartment units under the U. S. Department of Housing and Urban Development guidelines for approximately 175 senior citizens (Pet. p1). Equally important is Petitioner's need for a variance to satisfy federal requirements. While the Department of Housing and Urban Development has approved Petitioner's preliminary construction plans and reserved \$406,800 annual funding for rent subsidy and mortgage insurance, HUD has conditioned final approval of funding upon meeting all administrative and statutory requirements (Pet. Exh. A). Accordingly, ADC has petitioned the Board for this variance to allow it to construct sewer mains and connect to the Effingham sewage treatment plant. If this requested relief is not granted by March, 1979, Petitioner claims that it will lose the amounts reserved by HUD and force abandonment of this project (Pet. p3).

Both parties to this variance agree there is a definite need for low income housing for senior citizens in the community of Effingham. According to the Effingham County Housing Authority, few low-rent apartments are available to those elderly on low fixed incomes. At last count, the Housing Authority had 84 applicants in need of this type of housing. Comments from the Effingham City Council on Aging and the Effingham Mayor and City Council support Petitioner's project and the Agency has received communications from the Superintendent of the Effingham County Department of Public Aid further substantiating this immediate need for low-income elderly housing in this area (Pet. Exh. B, C, D, Rec. p2).

Review of the record indicates that while the Effingham treatment facility is biologically overloaded, the City of Effingham has initiated interim measures to substantially improve the effluent quality from its sewage treatment plant. In 1975, the Effingham STP produced discharges which averaged 78 mg/l BOD₅ and 84.3 mg/l SS with maximum levels of 150 and 160 mg/l respectively (Pet. Exh. D). Subsequent discharge monitoring reports showed a marked improvement to 29/40 BOD₅/SS as early as October-December, 1975 (Pet. Exh. D), and most recently the BOD₅/SS readings for a six-month period ending in October, 1977, averaged 27.8 mg/l and 22.0 mg/l respectively (Pet. Exh. F).

The City of Effingham has also undertaken measures to upgrade its sewage treatment plant under a federal construction grants program. Upon last review in Mayhood, PCB 77-161, (December 8, 1977) of its efforts, the City of Effingham reported that Step I facilities planning had been completed; Step II plans for rehabilitation of sewer system and to correct its combined sewer overflows were underway; and the City had been certified for Step III construction by the USEPA. Since then, the Step III construction grant has been delayed due to lack of available federal funds and because of administrative appeals to Region V of the USEPA to protest the award of a contract and problems associated with equipment warranties (Pet. Exh. F, Rec. p2).

Until completion of the Effingham sewage treatment plant, discharges into the Salt Creek tributary to the Little Wabash River are expected to be well-within the 40/60 BOD₅/SS limits of its NPDES permit as modified by a USEPA enforcement compliance schedule letter due to expire on September 30, 1981 (Rec. p1). Inspection of the Salt Creek downstream of the Effingham discharge revealed little visual contamination, no sludge banks, odors, or any anaerobic conditions. Petitioner claims that effluent increases from the Petitioner's project of 17,500 GPD resulting in daily increased loadings of 30 pounds BOD₅ and 39 pounds suspended solids to the Effingham plant will not unduly harm the water quality in the Salt Creek (Pet. p2, 3, Exh. G).

It is not the practice of the Board to grant a variance without a showing of arbitrary and unreasonable hardship. Mayhood, PCB 77-161 (December 8, 1977). The Board also requires, in this case, a clear showing that Petitioner's activities will not cause substantial harm to the environment and that efforts are being made to achieve compliance. Alton Box Board, PCB 75-496, 20 PCB 279 (March 11, 1976).

In this matter, the Petitions and the Recommendation indicate that without a timely variance, subsidies reserved by HUD would be forfeited and Petitioner would abandon this housing project for the elderly in Effingham. We need only mention that the record clearly reflects immediate efforts to minimize harm to the waters of the Wabash River Basin and Petitioner is actively seeking federal funding for upgrading the treatment plant in Effingham.

The Board finds the housing needs for the Effingham elderly warrant an immediate grant of a variance from Rule 962(a) of Chapter 3 of the Regulations. The Board will, however, dismiss the Petition for relief from Section 39 of the Act, for, in this case, a variance from Rule 962(a) provides sufficient relief to allow issuance of the construction and operation permits for obtaining the sanitary sewer connections needed to serve this construction project.

While the record indicates that the Effingham treatment plant has made marked improvements in its effluent quality, the grant of relief to the American Development Corporation is further reason for the City of Effingham to expedite its plans for upgrading its sewage treatment plant and sewer system. The Board expects the City of Effingham to commence construction improvements on the treatment plant as soon as federal funding becomes available.

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

ORDER

1. The American Development Corporation is hereby granted a variance from Rule 962(a) of Illinois Pollution Control Board Rules and Regulations, Chapter 3: Water Pollution, to allow construction and operating permits for the sewer mains and the sanitary sewer connections needed to serve this project for the elderly.

2. The Petition for Variance from Section 39 of the Environmental Protection Act is hereby dismissed.

3. Within forty-five (45) days of the date of this Order, the Petitioner shall submit to the Manager, Variance Section, Division of Water Pollution Control, Illinois Environmental Protection Agency, 2200 Churchill Road, Springfield, Illinois, 62706, an executed Certification of Acceptance and Agreement to be bound to all terms and conditions of the variance. The forty-five day period herein shall be suspended 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 Pollution Control Board in PCB 77-296, understand and accept said Order, realizing that such acceptance renders all terms and conditions thereto binding and enforceable.

SIGNED

TITLE

DATE

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 30th day of March, 1978 by a vote of 5-0.

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