

ILLINOIS POLLUTION CONTROL BOARD  
December 20, 1977

CHARLES EUGENE MAYHOOD, )  
 )  
 Petitioner, )  
 )  
 v. ) PCB 77-161  
 )  
 ENVIRONMENTAL PROTECTION AGENCY, )  
 )  
 Respondent. )

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

This matter comes before the Board on a variance petition filed on June 15, 1977, by Charles Eugene Mayhood requesting relief from Section 39 of the Environmental Protection Act and from Rule 962 in Chapter 3 of the Water Pollution Regulations. The Petitioner filed an Amended Petition on July 8, 1977, waiving his right to a public hearing and submitted a second Amended Petition on September 26, 1977; the Agency filed a Recommendation to deny on August 9, 1977, and an Amended Recommendation to grant with certain conditions on October 28, 1977.

Petitioner seeks a variance to allow the connection of twelve lots in the B & B Subdivision to an existing eight-inch sewer extension which is tributary to the City of Effingham sewage treatment plant (2nd Amend. Pet. p3); the sewage treatment plant has been on restricted status since February 20, 1976, and is both organically and hydraulically overloaded (Rec. Exh. 1, 2). Eight of the twelve lots are occupied by homes currently utilizing grossly inadequate septic tank facilities which the Effingham County Health Department has found to be a health hazard (Pet. Exh. E-1, E-2). Mr. Mayhood alleges that the eight-inch sewer extension, when constructed, was designed to handle exclusively a daily discharge of 1030 gallons of domestic sewage from the rest room facilities of an auto dealership, Dan Hecht Chevrolet. The tap-ons presently requested by Petitioner are deemed necessary to correct a public health hazard existing in the vicinity of the sewer extension (2nd Amend. Pet. p3; Amend. Rec. p2). The Petitioner estimates that the average flow from the auto dealership and the B & B Subdivision would be 5,000 gallons per day resulting in daily averages of 8.5 pounds BOD<sub>5</sub> and 11 pounds of suspended solids (Pet. p2).

The Petitioner's extension is connected to the Effingham sewage system which has been on restricted status since February 20, 1976. At the present time, the City of Effingham is undertaking measures to upgrade its facility. According to the Agency's Amended Recommendation at page 3, the City has completed Step I facilities planning for upgrading the system and treatment of combined overflows; Step II plan preparation is underway for sewer system rehabilitation and primary treatment and chlorination; and Step III construction for an upgraded sewage treatment plant has been certified by the USEPA.

The record indicates that Mr. Mayhood applied to the Agency for a permit to connect the twelve lots of the B & B Subdivision to an eight-inch sewer extension constructed by the Petitioner to transport the discharges from the auto dealership into the Effingham sewage system. The Agency denied the application on May 9, 1977, citing treatment plant inadequacy and the sewer ban. After a permit denial, a petitioner has three options; one, make the necessary corrections in the permit application and resubmit it to the Agency; two, contest the Agency decision in a permit denial appeal; or three, seek a variance from the applicable regulations upon a showing of hardship. In this matter, Mr. Mayhood chose to seek a variance from Section 39, the permit requirements of the Act, and from Rule 962 of Chapter 3 in order to connect others to the sewage system on restricted status.

The Board will dismiss the Petition for Variance from Section 39 of the Act because a grant of variance from Rule 962 will give sufficient relief from the standards of issuance for construction and operating permits of Chapter 3 as necessary to connect those parties who have demonstrated the requisite hardship.

It is not usual practice for the Board to grant variances to petitioners who plead the hardship of others in justification of a grant of variance. The Petitioner needs no variance in this case; the Petitioner constructed an eight-inch sewer extension to handle daily discharges of 1030 gallons from a single building, such connection being exempt from the permit requirements of Rule 951(b) of Chapter 3. Mr. Mayhood now claims that he needs a variance from Rule 962 of Chapter 3 in order to connect the twelve lots of B & B Subdivision. The Board does not agree; the residents of the B & B Subdivision are entitled to the variance based on an independent showing of arbitrary and unreasonable hardship. The Petitioner has established no hardship to himself which would be entitled to a variance.

In the B & B Subdivision, the residents of the eight developed lots served by septic tanks are experiencing problems constituting a threat to public health. The Board recognizes this serious problem and will permit the eight residents to connect to the sewer extension constructed by the Petitioner. The Board will grant relief from Rule 962 for these residents only. The Board will not permit further connections to the sewer extension until the "sewer ban" has been lifted in Effingham.

The record further discloses that critical sections of the sewer extension may have been constructed with materials other than as specified in the permit application or required by Agency design criteria pursuant to Rule 967 of Chapter 3 (Amend. Rec. p3). The Board will require Petitioner to submit "as built" plans to the Agency certified by an Illinois registered professional engineer and upgrade the sewer extension construction as necessary to meet Agency criteria.

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

#### ORDER

1. The Petition for Variance from Section 39 of the Act is hereby dismissed. The Board will grant a variance from the operating and construction permit requirements of Chapter 3 as is necessary to immediately connect the owners of the eight homes in the B & B Subdivision, subject to the following conditions:

- a) Petitioner shall submit within 60 days of this Board Order "as built" plans certified by a professional engineer registered in the State of Illinois showing the detail of the sewers and the appurtenances installed.
- b) If it is determined by the Agency that any component of said sewer extension is violative of Agency design standards or is inadequate for the purposes for which that component is intended, Petitioner shall immediately replace or modify such component according to the specifications of the Agency.

2. The Petition for Variance from Rule 962 of Chapter 3: Water Pollution Regulations is hereby granted to the owners of the eight homes presently existing in the B & B Subdivision, four of whom are identified as:

Gene Marshall, 200 Shadyside Drive  
Faye Moore, 302 West Shadyside Drive  
Steve and Cathy Swingler, 108 Shadyside Drive  
Madonna Ryan, 300 West Shadyside Drive

These residents and the four unidentified owners of existing structures shall be granted a variance from Rule 962 of the Rules which will permit them to connect with the sewer extension constructed by the Petitioner.

3. No further connections shall be made to the said sewer extension until the restricted status is removed from the Effingham STP and the Petitioner obtains a permit from the Agency.

4. 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 not run 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 77-161, 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 20th day of December, 1977 by a vote of 5-0.

Christan L. Moffett (pk)  
Christan L. Moffett, Clerk  
Illinois Pollution Control Board