

ILLINOIS POLLUTION CONTROL BOARD
May 26, 1977

WILLIAM GILMAN,)
)
 Petitioner,)
)
 v.) PCB 77-35
)
 ENVIRONMENTAL PROTECTION AGENCY,)
)
 Respondent.)

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

The original Petition for Variance in this matter was filed on February 1, 1977, seeking relief from the requirements of Rule 962 of Chapter 3: Water Pollution, delineating the standards of issuance for non-NPDES Permits under sub-part B, Part 9 of Chapter 3, (Rule 951 et seq.) Variance was sought to allow the construction of a sewer extension to serve a planned 10-lot subdivision (the "Gilman Addition to the City of Wenona") which would be tributary to the City of Wenona sewage treatment plant.

In an Interim Order entered February 3, 1977, the Board found Mr. Gilman's Petition inadequate and ordered that additional information be filed. That information was filed in an Amended Petition received March 11, 1977. The Recommendation of the Environmental Protection Agency (Agency) was received on April 25, 1977. No hearing was held in this matter.

Petitioner wishes to construct a 5-acre subdivision of 10 lots on land purchased for \$25,000 in September, 1976. The subdivision would be served by a 576-foot sewer extension which, it is estimated, will carry 4800 gallons per day, including 8.2 pounds BOD and 9.6 pounds Suspended Solids. The estimated population of the subdivision will be 48 persons. The subdivision would be serviced by the City of Wenona, which currently has a combined storm and sanitary sewer system which outlets to a pumping station adjacent to Petitioner's land.

Petitioner alleges that the only alternative use for the land in question is farming, which because of the size of the parcel, could only realize a net income of approximately \$500 per year.

A Permit for the sewer extension was requested from the Agency on December 1, 1976. That Permit application was denied by the Agency because the City of Wenona's sewage treatment plant cannot meet the applicable standards of 4 mg/l BOD and 5 mg/l SS for discharges to Sandy Creek, tributary to the Illinois River. Although the sewage treatment plant has a design population equivalent (PE) capacity of 1,500 and has a current loading of only approximately 1000-1100 PE, the existing two-stage waste stabilization type treatment plant cannot meet applicable standards.

The City has refused to accept Step II and Step III grants for improvement of the sewage treatment plant. Because the City refused the construction grants, and because it cannot meet its 50 mg/l and 100 mg/l NPDES permit limitations for BOD and SS, respectively, the Agency refused the Petitioner's application to construct the sewer extension in issue.*

The Petitioner alleges, and the Agency does not contest, that Wenona was not on Restricted Status prior to December 1, 1976. Nor does the Agency contest Petitioner's allegations that an Agency representative informed Petitioner that a Permit could be obtained notwithstanding the City's refusal to accept Step II and Step III funding. Petitioner alleges that his commitment to purchase and develop the land in question was made based on such assurance.

The Agency's Recommendation reiterates essentially the same facts as are alleged by the Petitioner and recommends that the Petition be granted. The Agency feels, apparently, that Petitioner should not be penalized under these circumstances for the City of Wenona's failure to meet applicable standards. In addition, the Agency alleges that the addition of 48 PE to the existing plant would not result in any additional degradation of the receiving waterway. The City has sufficient additional capacity to treat the additional load and still meet existing effluent levels.

Although we feel that any additional load added to an already substandard sewage treatment plant must exacerbate an existing violation, we nonetheless agree with the Agency that the additional load to be generated by Petitioner's subdivision will not generate such environmental damage as would outweigh the hardship to Petitioner if the Variance is not granted.

Weighing these factors, we agree that the potential hardship to Petitioner outweighs the potential adverse impact on the environment if the Variance were not granted. Likewise we agree with the Agency that the alternative - the installation of individual septic fields for each of the lots in question - would pose a potentially greater adverse impact upon the environment.

We shall therefore grant the requested variance, but shall condition it upon a requirement that no more than the requested number of residences be connected to the proposed sewer extension. Under the circumstances, we do not feel that additional conditions are necessary.

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

*Although failure to meet NPDES standards is not pertinent to our decision here, Wenona's refusal to accept grant funding is significant, inasmuch as that action deprives the City of any relief under Rule 409 of Chapter 3, ("delays in upgrading").

ORDER

IT IS THE ORDER OF THE POLLUTION CONTROL BOARD that Petitioner William Gilman be granted a Variance from Rule 962 of Chapter 3: Water Pollution, to allow the construction of a sewer extension tributary to the City of Wenona sewage treatment plant to serve a 10-lot subdivision known as the "Gilman Addition to the City of Wenona." Said Variance shall be conditioned upon the following:

1. Petitioner shall connect no more than 10 individual residences to said sewer extension.

2. Petitioner shall, within thirty (30) days of the date of this Order, execute and forward to the Environmental Protection Agency, Control Program Coordinator, 2200 Churchill Road, Springfield, Illinois 62706, a Certificate of Acceptance in the following form:

I, (We), _____, having read the Order of the Illinois Pollution Control Board in case No. PCB 77-35, understand and accept said Order, realizing that such acceptance renders all terms and conditions thereto binding and enforceable.


SIGNED

TITLE

DATE

Mr. James Young dissented.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 26th day of May, 1977, by a vote of 4-1.



Christan L. Moffett, Clerk
Illinois Pollution Control Board