

ILLINOIS POLLUTION CONTROL BOARD
May 6, 1976

THE POW-WOW CLUB, INC., a)
not-for-profit Illinois)
domestic corporation,)
)
Petitioner,)
)
v.) PCB 74-306
)
ENVIRONMENTAL PROTECTION AGENCY,)
)
Respondent.)

Richard R. Haldeman, Williams, McCarthy, Kinley, Rudy & Picha,
Attorney for Petitioner
Stephen H. Gunning, Environmental Protection Agency, Attorney
for Respondent

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

This matter comes before the Board on the petition of the Pow-Wow Club, Inc. seeking variance from Rules 3.12, 3.30, and 5.28 of the Public Water Supply Systems Rules and Regulations, Sections 15, 18, and 19 of the Environmental Protection Act, and Section 1 of the Act to Regulate the Operating of a Public Water Supply (Certification Statute).

The Pow-Wow Club owns and operates a public water supply system furnishing drinking water to the Tullock Wood Trails Subdivision near Rockford, Illinois. The petition was filed on August 19, 1974 after the Board entered an Order on July 18, 1974 in an enforcement action brought by the Agency against Petitioner which charged many violations in the operation of its public water supply. The aforesaid Order found that Petitioner had operated in violation of the listed statutes and regulations and further ordered that Petitioner cease and desist from further violation within 240 days of the date of the Order. Petitioner was given 150 days to file a compliance plan with the Agency, and upon such submission was given 90 days to construct the needed improvements. Since Petitioner now states that a two year period is necessary to complete the needed improvements, the petition will additionally be considered as a request for relief from the compliance schedule as detailed in the prior Board Order.

Petitioner estimates that the costs of compliance range from \$150,000 to \$275,000 and in view of this capital expense is considering restructuring the facilities so that the system will no longer come within the definition of a public water supply as set forth in Section 3(j) of the Act, and thereafter not subject to the statutes and rules from which it presently is seeking variance. The restructuring would be accomplished by drilling additional wells and severing some existing connections in present distribution systems so that no well will serve more than nine separate residential properties.

At hearing held on December 20, 1974, the parties entered into an agreement postponing further proceedings in this matter pending adoption of regulations by the Federal Environmental Protection Agency under the Safe Drinking Water Act. Petitioner requested the postponement anticipating that the Federal Act might supercede or preempt State regulation. In view of this possibility, Petitioner alleges that they were hesitant to begin any program fearing that any plan selected might not be sufficient to comply with the Federal requirements. As a condition of this postponement, Petitioner agreed to furnish water sample analyses to the Agency on a regular basis and to employ a properly certified operator to supervise the operation of the system.

On January 29, 1976, a second hearing was held in this matter at which time Petitioner called two witnesses in support of their variance petition. Mr. David Conklin testified he received no complaints regarding the system for a period of three and a half years that he was President of the Club (R. p10). He also testified that it was the intent of the Club to become a private water supply (R. p11) but that the Federal requirement limiting a private supply to one serving 24 individuals or less was presenting a difficult problem to the Club (R. p13).

Mr. Robert Brambert, President of the Club since December of 1975, also testified that it was the intent of the Club to become a private water supply but that the Club needs more time to consider the available alternatives (R. p18).

Agency testimony at the second hearing centered around various alternative plans available to Petitioner to come into compliance. It was also revealed that Petitioner had totally failed to honor the agreement entered into with the Agency in December of 1974. The Agency did not receive any water sample analyses from Petitioner for the entire calendar year of 1975 (Ag. Ex. #1), and Petitioner also failed to employ a properly certified water supply operator (Ag. Ex. #2). This is not surprising in view of the fact that the Club President, Mr.

Brambert, admitted on cross examination that he was unaware of the agreement requiring that these steps be taken by the Club (R. p21-23).

After considering the evidence in this matter the Board is left with the general impression that Petitioner intends someday to restructure its system to take it outside the definition of a public water supply. What seems to be lacking is any definite plan or program to accomplish this result. Little action has been taken, and all that seems to have occurred is a great deal of speculation regarding the possible differences in the State and Federal regulations. It is remarkable, to say the least, that Petitioner so casually disregarded the postponement agreement entered into with the Agency for interim operation of the system. The inescapable fact is that the system as now operated is a public water supply subject to the provisions of the Act and our Regulations and is currently in violation.

In view of the foregoing the Board is unable to grant the variance as requested. Petitioner has not established to the satisfaction of the Board that it will suffer an arbitrary or unreasonable hardship if the variance is denied or that the hardship is in fact not self imposed. Petitioner's past conduct has not been such that the Board feels compelled to grant this variance, and the construction plan is simply not firm enough to merit consideration.


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

ORDER

The Pow-Wow Club's, Inc. petition for variance is denied.

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 6th day of May, 1976 by a vote of 5-0.


Christan L. Moffett, Clerk
Illinois Pollution Control Board