

ILLINOIS POLLUTION CONTROL BOARD
March 11, 1976

MEDINAH INVESTORS, INC.)	
)	
Petitioner,)	
)	
)	
v.)	PCB 75-28
)	
ENVIRONMENTAL PROTECTION AGENCY,)	
)	
Respondent.)	

MR. RICHARD J. KISSEL, and MR. EUGENE W. BEELER, JR., appeared on behalf of Petitioner;
MR. JOHN T. BERNBOM, and MS. BARBARA REVAK, appeared on behalf of Respondent.

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

Petitioner, Medinah Investors, Inc. filed a Petition for Variance before this Board on January 20, 1975. On March 3, 1975 the Environmental Protection Agency (Agency) filed a Recommendation to deny the petition. On August 28, 1975 Petitioner filed its First Amended Petition for Variance. The Agency then filed a new Recommendation on September 29, 1975; to which Petitioner filed a response on October 29, 1975; to which the Agency filed a reply on November 18, 1975. After a limited waiver of its right to a final decision within 90 days, Petitioner moved for, and was granted, a postponement of the scheduled hearing for 37 days. The hearing was held on January 22, 1976.

Petitioner owns and operated "Adventureland", an amusement park located at the intersection of Lake Street and Medinah Road, near Addison, DuPage County, Illinois. Petitioner seeks a variance from Rule 1113 of the Board's Water Pollution Regulations, to allow it to construct a package sewage treatment plant to replace its present septic tank system. Only domestic wastes generated from Petitioner's toilet facilities are generated at "Adventureland".

On January 6, 1972 the Board adopted Rules 1101-1114 of its Water Pollution Regulations, better known as the DuPage County Wastewater Regionalization Program. These Regulations, as implemented by the Regionalization Plan, adopted on August 29, 1974 provide for the division of DuPage County into 9 Regions for the purposes of reversing the proliferation of small, inefficient sewage treatment plants in this densely populated and rapidly developing County. The plan further designates certain plants to be enlarged, and other plants to be phased out. Rule 1113, from which Petitioner seeks variance, provides as follows:

1113 Future Construction

No permit shall be granted for the construction or operation of any additional sewage treatment plant in DuPage County, except for interim facilities in the event of a demonstrated emergency, that does not conform with the principles of the Regional Program described in Section 1108 of this Chapter, or that is of capacity so small as to create an insignificant risk of inadequate treatment, according to the policies expressed in Rule 1101 of this Chapter. (emphasis added)

There are two basic issues which are raised in this case. The first is simply whether a variance is needed. Second is whether compliance with Rule 1113 would result in the placing of an arbitrary or unreasonable hardship upon Petitioner. It is clearly Petitioner's burden to prove both of these facts.

A variance in this case is necessary only if it is shown that neither exception in Rule 1113 is applicable. The first exception is for "interim facilities in the event of a demonstrated emergency". No emergency has been demonstrated. The second exception is where the proposed plant's "capacity is so small as to create an insignificant risk of inadequate treatment, according to the policies expressed in Rule 1101 of this Chapter." It is to this issue that we must turn.

Rule 1101, which is stated to be the gauge by which the exceptions in Rule 1113 are measured, provides:

1101 Preamble:

The proliferation of numerous small sewage treatment plants in densely populated and rapidly developing DuPage County constitutes a severe and intolerable impediment to the correction of present water pollution and a continuing threat of additional pollution in the future. Not only do the higher unit costs of constructing and operating small plants waste finite dollars and therefore contribute to pollution;

small plants cannot produce as satisfactory an effluent as can larger plants, because they cannot provide certain types of sophisticated treatment, because they cannot practicably be adequately supervised or maintained, and because they cannot provide adequate standby treatment capacity to prevent pollution in the event of a malfunction.

The establishment or continued operation of sewage treatment plants so small as to exhibit these deficiencies, in areas such as DuPage County where the population density is high enough to make larger plants economically feasible and indeed economically far more desirable, is contrary to the anti-pollution policy of the Environmental Protection Act. The nine service-area concept for DuPage County proposed by the Northeastern Illinois Planning Commission sets forth a reasonable geographical basis upon which to base a regionalization scheme in DuPage County and the Board endorses this concept in principle. All regionalization efforts made under this Chapter shall be directed toward a reduction in the number of sewage treatment facilities at the earliest reasonable deadline. A series of regional plants, well-operated and strategically located, will greatly minimize the pollutional load upon the DuPage County streams and assure conformance with the Environmental Protection Act.

(Emphasis added)

* * * * *

Rule 1113, from which variance is here sought, thus allows the Agency to grant a permit for construction and operation of a sewage treatment plant in DuPage County if it is shown not to be in conflict with the goals and policy determinations of Rule 1101. A variance is not needed for construction and operation of a sewage treatment plant which falls outside of the purpose of the regionalization plan. Several factors are stated in Rule 1101 as findings of fact which establish the necessity of the regionalization plan. If it can be demonstrated that, because of the small capacity of this proposed plant, these policy findings do not apply in this case, and thus that an insignificant risk of inadequate treatment would be created, then the Agency is not prohibited by Rule 1113 from issuing the appropriate permits.

Petitioner's proposed sewage treatment plant is designed to treat a maximum of 30,000 gallons of domestic waste per day, and will cost approximately \$75,000 (R. 36). The 30,000 gallons is the maximum daily flow based on 6,000 persons daily attendance and a flow factor of 5 gallons per person (R. 34). The plant could, however, treat at a rate of 75,000 gallons per day (R. 34). Given the facts that this plant would be operated only during a period between approximately Memorial Day and Labor Day (R. 43) and will treat only domestic wastes, we must next determine effluent requirements and whether they will be met.

Mr. John G. Morris, Petitioner's consulting engineer, states that the plant's effluent, which will be discharged into Springbrook Creek. is required to meet a standard of 30 BOD and 37 suspended solids (R. 32). This is based on a dilution ration of 17 to 1 (R. 33). Mr. Morris further testifies that, "we would expect to consistently meet a 10 parts per million of BOD, 12 parts per million suspended solids, and perhaps --- not perhaps, complete nitrification during the period the plant is in operation." ... "We should have zero fecal coliform" (R. 40).

Further, the proposed plant provides for tertiary filtration facilities (R. 48).

Thus, given the Petitioner's description of the proposed plant and its effluent, the Board must next determine whether the policy findings made in Rule 1101 will apply in this case to indicate whether or not the risk of inadequate treatment would be significant.

Some of the facets to be considered in applying the policy findings of Rule 1101 are:

1. Higher unit costs of small plants, which wastes finite dollars and therefore contributes to pollution.
2. Small plants cannot produce as satisfactory an effluent as can larger plants.
 - A. They cannot provide certain types of sophisticated treatment.
 - B. They cannot practicably be adequately supervised or maintained.
 - C. They cannot provide adequate standby treatment capacity to prevent pollution in the event of a malfunction.

A basic consideration which runs throughout this discussion is that Petitioner is presently using a septic system. Environmentally, it is possible that even a small inefficient sewage treatment plant subject to all of the inadequacies stated above would still be preferable to a septic system. Other considerations deal with the possibility of a hook-up into another sewage treatment plant. However, these considerations are not strictly relevant to the application of Rule 1113 to the present matter. They are more appropriately addressed to the discussion of whether a variance is appropriate, which subject can only be addressed if it is determined that the proposed plant is not excepted from the prohibition of Rule 1113.

Therefore, we must first discuss the applicability of the policy findings of Rule 1101 as stated above. Factor number 1, the higher costs of small plants, is primarily directed at municipalities and the use of public funds. This factor is not applicable to the present situation where it has been determined that the construction of a small plant is the least expensive alternative (R. 22). Factor number 2, the production of a less satisfactory effluent, is also apparently not a criticism applicable to the proposed plant. The proposed plant is expected to put out an effluent which is better than the applicable standards. To accomplish this, tertiary treatment is included. Also, as the plant is only to be in operation for part of the year, it will be easy to arrange for proper maintenance and supervision (R. 42). Further, it has not been shown that there would be an inadequate standby treatment capacity in the event of a malfunction. Perhaps provisions could be made to operate the septic system in the event of a treatment plant malfunction.

It is therefore clear that the proposed plant, considering the policies expressed in Rule 1101, may be of a "capacity so small as to create an insignificant risk of inadequate treatment" (Rule 1113). Given an otherwise inadequate proposal for a sewage treatment plant, the Agency is thus not prohibited by Rule 1113 from using a permit for construction or operation. The Board therefore finds that Petitioner has not demonstrated that it needs a variance from Rule 1113. As such it is not necessary to address the question of hardship upon Petitioner. A variance, which is based on hardship, will not be granted where none is necessary.

Where the regulation in question is not applicable to Petitioner's activities it cannot be said to create an arbitrary or unreasonable hardship. Petitioner in this case has failed to show that Rule 1113 would prohibit the granting of a permit for the construction and operation of its proposed sewage treatment plant. It is therefore unnecessary to address the issue of whether a variance would be granted if Rule 1113 did prohibit the proposed activity.

The Agency states, at page 7 of the Recommendation, that: "The Agency is of the opinion that Petitioner's Amended Petition sufficiently establishes that its proposed package treatment plant is within the purview of the second exemption of Rule 1113." The Board agrees. Petitioner's remedy is therefore a Permit Application, rather than a variance. As an interim plant with a small capacity, the instant plant apparently does fit into the exemption to Rule 1113. However, this determination is for the Agency to make via the permit application process. A variance here is not required.

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


ORDER

The Amended Petition for Variance is hereby dismissed.

IT IS SO ORDERED.

Mr. Goodman and Mr. Young abstained.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 11th day of March, 1976 by a vote of 3-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board