

3. Petitioner requested reconsideration of its permit application in a communication to the Agency dated January 17, 1975.

4. In a letter dated February 20, 1975, the Agency rejected Petitioner's request for reconsideration.

5. Petitioner applied for a "construct only" permit for the same sewer extension and connection in an application dated June 16, 1975, citing improvements to be made to the City of West Chicago's Sewage Treatment Plant.

6. In a letter dated July 11, 1975, the Agency denied Du Page's "construct only" permit application.

Petitioner's first claim in the permit appeal is that the Agency failed to conform to the requirements of Section 39 of the Environmental Protection Act. That Section requires that the Agency specify the reasons for permit denial. Ill. Rev. Stat., Ch. 111-1/2, §1039 (1975).

The information contained in the Agency's rejection letters is indeed scanty. We need not, however, rule on the adequacy of the language in the Agency's rejection letters. Petitioner has made its case on substantive grounds, so that we need not decide this case on mere procedural matters.

Petitioner presented considerable testimony and other evidence indicating that the City of West Chicago sewage treatment plant has considerable reserve hydraulic and organic capacity, and that the addition of Petitioner's nursing home will not cause overloads at that plant. Nor, according to the evidence submitted by Petitioner, will the addition of the 210 PE nursing home add to any existing or future inability of the plant to meet effluent standards. (Pet. Ex. 5.) As detailed below, that evidence shows that the STP is currently operating well below capacity (hydraulic and organic), is meeting the applicable effluent limits, is still being improved on an interim basis, and is awaiting general expansion as a regional plant under grant funding from the federal government. (R. 136, 137.) The evidence presented by Petitioner was essentially unchallenged by the Agency. Since Petitioner has met its burden under the Act and our Procedural Rules, and no contrary evidence is before us, we must grant the relief requested and overturn the Agency's permit decision.

HYDRAULIC AND ORGANIC CAPACITY

The Agency never challenged Petitioner's evidence on the excess hydraulic and organic capacity of the West Chicago STP. While Petitioner's evidence on the subject was not particularly well organized or coherent, it is more than sufficient to show that no problems will be caused by the addition of the facility in question.

The STP had, at the time of the first Permit Application submission by Petitioner, a hydraulic design capacity of 2.44 Million Gallons Per Day (MGD). Since that time, on April 21, 1975, an old, unused portion of the STP was placed back in operation, adding hydraulic capacity of 0.58 MGD (Pet. Ex. 1, p. 11). Calculations by Petitioner indicate that the combination of the two plants results in a capacity of 3.5 MGD, or a PE of 35,000 (Pet. Ex. 1, pp. 14, 15). Petitioner also offered the following figures taken from 1975 data, showing loadings on the present plant for both the 3.5 MGD capacity which it calculated and a lower capacity of 2.63 MGD:

	<u>2.63 MGD</u>	<u>3.5 MGD</u>
Present % Hydraulic Capacity	93.2%	70.0%
Present % Organic Capacity	65.5%	49.2%

These figures were not challenged by the Agency. They are, in fact, partially borne out in a report prepared by an Agency employee, (Pet. Ex. 5). There is presently no bypassing of sewage to the receiving stream (id., p. 9). We find that the addition of 210 PE from Petitioner's proposed nursing home would not cause the STP to exceed either its hydraulic or organic capacity.

STP EFFLUENT

Data from both Petitioner and the Agency indicate that the West Chicago STP is currently meeting the applicable 20/25 standard for BOD₅ and SS. Although the Agency seemed to feel that a standard of 10/12 for BOD₅ and SS should be applicable to the STP, (e.g., R. 136), there is nothing in the record to indicate that that is the applicable standard. There was testimony that the dilution ratio for the West Chicago STP exceeds one to one (R. 97), and that the plant is under federal funding for general plant improvement, (R. 136, 137). These factors, taken with our recent action extending the deadline dates for municipal STP effluents, show that the applicable standard is 20/25. R 74-17, 18 PCB 156 (July 17, 1975). Exhibits submitted by both the Petitioner and Respondent indicate that these standards are being met, (Pet. Ex. 1; Resp. Ex. 1).

The Agency also noted that the NPDES Permit presently held by the West Chicago STP requires that the 10/12 standard be met by October 1, 1976, (R. 136). Until the State of Illinois receives authority to administer the NPDES program, a prospective inability to meet an interim NPDES standard which is more restrictive than the general Regulations of this Board cannot be grounds for refusal to issue a permit in a situation of this type. The Agency, however, admits that West Chicago will be able to have the 10/12 standard in its NPDES Permit modified, (R. 137, 138).

The Record in this case disclosed no other reasons why the Agency might have refused the requested permits. In that Petitioner has presented sufficient evidence to overcome any objections to the issuance of the permit on the grounds discussed above, we find no reason why the Agency's action on this matter should be not reversed.

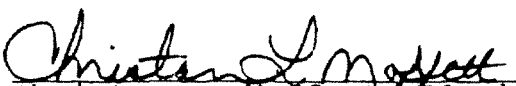
This Opinion constitutes the conclusions of law and findings of fact of the Board in this matter.

ORDER

IT IS THE ORDER OF THE POLLUTION CONTROL BOARD that Respondent Illinois Environmental Protection Agency issue to Petitioner Du Page Convalescent & Nursing Center, Inc., the appropriate construction and operating permits to allow the construction and use of the sewer extension and connection facilities described in the foregoing Opinion.

Mr. James Young abstained; Dr. Donald Satchell abstained.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 8th day of January, 1976, by a vote of 3-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board