

ILLINOIS POLLUTION CONTROL BOARD

January 31, 1974

THE HINSDALE SANITARY DISTRICT,)
a municipal corporation of)
Cook and DuPage Counties,)

Complainant,)

v.)

PCB 73-417

ILLINOIS ENVIRONMENTAL PROTECTION)
AGENCY, DUPAGE COUNTY DEPARTMENT)
OF PUBLIC HEALTH, CITY OF OAK)
BROOK TERRACE, ILLINOIS COMMERCE)
COMMISSION, ROBERT R. KRILICH,)
CHICAGO TITLE AND TRUST COMPANY,)
as trustee under Trust No. 51272,)
RIVERWOODS DEVELOPMENT CORPORATION))

Respondents.)

Louis R. Main, Attorney for Hinsdale Sanitary District
Marvin I. Medintz, Assistant Attorney General for the EPA
Daniel H. Pappas, Attorney for Robert Krilich, Riverwoods
Development Corporation and Chicago Title and Trust
Company as trustee
Joseph E. Bonk, Assistant State's Attorney for the DuPage
County Department of Public Health

OPINION AND ORDER OF THE BOARD (by Mr. Henss)

On January 6, 1972 the Pollution Control Board adopted a Regulation (Chapter IV Water Pollution, Part 11, Regional Sewage Treatment), to advance the consolidation and regionalization of sewage treatment facilities in DuPage County. The Preamble of the Regulation (Rule 1101) stated:

"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.

In order to accomplish the above goals, the Board will appoint a Hearing Officer for each of the nine regions; he shall bring the various Parties in that region together; either jointly or individually, the Parties shall submit a Regional Plan to the Hearing Officer; the Hearing Officer shall conduct hearings on these submissions and make recommendations to the Board; based on these recommendations, the Board shall determine a program for each region, and, after publication, give final approval to a regional wastewater treatment program for DuPage County."

Other parts of the Regulation established a procedure for accomplishing the "above goals" including: The designation of parties to the proceeding, the appointment of hearing officers, the requirement for submission of regional plans and guidelines for the hearing officer to submit recommendations to the Board regarding the regional plans. The Regulation provides that after receipt of the recommendations from the hearing officer the Board shall issue a regional program for each of the nine regions which program shall provide specific findings in each region as to how

regionalization will be accomplished. The regional program to be issued under Rule 1108 will designate those plants to remain in service or to be expanded as regional plants and those plants which will be designated as interim facilities with specific phase-in and phase-out dates; will designate in each of the nine regions the governmental agency responsible for sewage treatment; will delineate areas of future growth within the County making provision for regional sewage treatment plant expansion when necessary; will provide for a sufficient transport system to carry sewage to the regional treatment plants; will evaluate the ability of each regional sewage treatment plant to handle its capacity consonant with predicted growth patterns within the County; and will provide that presently unserved areas are guaranteed service on a reasonable cost basis.

The Regulation further provides in Rule 1113:

"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."

In the Opinion adopting this Regulation (R70-17) the Board said that the actual structuring of a regional solution to sewage treatment problems must take place at the local level. It is clear enough that the Regulation did not adopt a specific regional plan but provided a mechanism for further action toward the goal of regionalization.

Hearings have been held to establish boundaries for the nine sewage treatment regions in DuPage County. Proposed boundary lines have been made public in order to facilitate comment by members of the public, but regional boundaries have not yet been finally established. The regional plans for sewage treatment which are contemplated by the Regulation have not yet been formulated.

At this stage of affairs the Environmental Protection Agency issued a permit (Permit No. 1973-GA-1765) for the construction and operation of a package sewage treatment facility for the Riverwoods Development in DuPage County. The Hinsdale Sanitary District promptly filed this action (PCB 73-417) asking us to revoke the permit which had been issued by the EPA and to issue a cease and

desist order terminating the construction or operation of Riverwood's sewage treatment system. The Complaint alleges that the Hinsdale Sanitary District, as responsible governmental agency, has prepared a plan for the treatment of all sanitary wastes within Region III and will be able to serve the needs of Riverwoods Development, which is located within the proposed Region III. It is alleged that the developers have chosen to install a privately owned sewage system in the belief that it will be less expensive than a connection to the sewage system operated by Hinsdale. Hinsdale claims that the installation of the package sewage treatment facility violates the Regulation on Regional Sewage Treatment and also an ordinance of the Hinsdale Sanitary District.

The Hinsdale Sanitary District has adopted an ordinance providing for the extension of its own authority beyond its corporate limits, as is provided by Statute, and prohibiting the construction of privately owned sewage disposal systems within three miles of the boundaries of the District.

Some of the Respondents filed Motions to Dismiss, contending that there could be no violation of Rule 1113 until a regional program has been promulgated under Section 1108 of the Regulation. Respondents argue that the acceptance of this lawsuit at this time would give Hinsdale exclusive jurisdiction in matters involving the discharge of sewage in the area.

We believe this action is premature and will dismiss it. We believe that such actions will be appropriate after the regional plans have actually been adopted. Complainant contends that it is the principle of the regional program and not the actual regional program which is important and that the issuance of the permit in this case does violate the principle of regionalization.

The Board did "endorse the concept in principle", and provide for further hearings to develop plans "to accomplish the above goals" (Preamble Rule 1101). However, we need more than a concept to entertain this lawsuit. Too many procedural problems remain undecided. We have not finally established boundary lines nor have we adopted specific plans for the nine separate regions. One of the issues which must be resolved bears upon the financing and timing of improvements to sewage systems or acquisitions of existing facilities. Guidelines for actions of this type have not yet been established.

We are willing to entertain lawsuits for the revocation of sewage treatment permits if those lawsuits are brought within the framework of our Water Pollution Regulations. However, no allegation was made here that the Riverwood sewage treatment system would be inadequate to treat the sewage within the area it will serve. No

allegation was made that the Riverwood sewage treatment system would in actuality cause water pollution. The Complaint is essentially founded upon the "regionalization" theory of R70-17 and the Hinsdale ordinance. Complainant has not presented us an issue to be decided under the Environmental Protection Act and the regulations adopted pursuant to that Act.

We have made a commitment to the concept of regionalization but it will be necessary to have a regional plan or program in existence prior to the acceptance of lawsuits of this type. This action is not yet ripe and will be dismissed.

This Opinion constitutes the findings of fact and conclusions of law of the Illinois Pollution Control Board.

ORDER

It is the Order of the Board that this action (PCB73-417) be dismissed.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order was adopted this 31st day of January, 1974 by a vote of 5 to 0.

Christan L. Moffett