

ILLINOIS POLLUTION CONTROL BOARD
February 14, 1974

Apple Orchard Utility Company, Inc., and)
Village of Bartlett (Intervenor),)
)
Petitioners,)
) PCB 72-383
vs.)
)
Environmental Protection Agency,)
)
Respondent.)

Jeffrey M. Randall, Attorney, on behalf of Apple Orchard
Utility Company, Inc. ;
Edward S. Mraz, Attorney, on behalf of Village of Bartlett ;
George Wolff and Dennis Fields, Attorneys, on behalf of
Respondent.

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

On September 26, 1972, Apple Orchard Utility Company, Inc. filed its Petition For Variance. On November 30, 1972, amendments to the Petition were filed and on January 3, 1974, Petitioner submitted an Amended Petition For Variance which is substantially different from the original. A hearing was held in this matter on January 8, 1974, and Respondent and Petitioner filed their Closing Statements on January 17, 1974 and January 22, 1974, respectively. By an Order of this Board, dated December 13, 1973, we allowed a motion by the Village of Bartlett to intervene.

Petitioner is engaged in operating pipelines, mains, equipment and facilities for the transportation, sale and delivery of water and the transportation, treatment and disposal of domestic sewage. Petitioner's sewage treatment plant includes a wet well, raw sewage pumps, a spirogester, a trickling filter and final clarification and chlorination equipment (R. 24). Petitioner serves 104 homes in the Apple Orchard subdivision, located in the Village of Bartlett, County of Cook, Illinois (R. 24). Industrial wastes are not treated (R. 23). The design capacity of Petitioner's plant is 260,000 gallons per day (R. 47).

Petitioner states that the metered daily flows and average weekly BOD₅ are as follows:

<u>Month</u>	<u>Flow (gal.)</u>	<u>BOD (mg/l)</u>	<u>Suspended Solids (mg/l)</u>
Dec. 1972	337,800	24.5	1.0
Jan. 1973	619,300	4.6	0.2
Feb. 1973	360,600	21.2	1.0
March 1973	360,900	7.2	0
April 1973	388,000	3.0	0
May 1973	360,000	2.5	0
June 1973	360,000	7.6	0
July 1973	360,000	7.5	0
Aug. 1973	350,000	2.3	0
Sept. 1973	282,500	2.1	0
Oct. 1973	202,500	2.8	0
Nov. 1973	200,750	0.4	0

Petitioner has a major infiltration problem and the Record indicates the need for a great deal of maintenance and remedial work on its facility (R. 179-184). Residents of the Apple Orchard subdivision, served by Petitioner, testified that raw sewage frequently backed up into their basements and yards (R. 204, 209, 213).

Petitioner estimates that the cost of improvements suggested by the Agency in order to bring its facility into compliance would be approximately \$100,500.00.

The Village of Bartlett, intervenor herein, is in the process of constructing a new 2.275 MGD wastewater treatment facility on a site approximately one mile west of Petitioner's plant (R. 118). The Bartlett facility is expected to be operational by November, 1974 (R. 117). Petitioner states that it has reached a tentative agreement with the Village of Bartlett for the purchase of Petitioner's assets (R. 83). Petitioner's Exhibit #2 is a Resolution of the Board of Trustees of the Village of Bartlett which authorizes the Village Attorney to draft or review a contract for sale. This is, of course, only evidence of an intent to purchase and the terms of the contract are not firm.

Petitioner argues, however, that the contract signing is eminent and that a trunk line will be constructed to divert the sewage which presently issues into Petitioner's plant to the new plant. Petitioner submits, therefore, that it would be unreasonable for it to bring its facility into compliance at great expense when its facility will be closed as soon as the trunk line is completed.

Although the evidence is incomplete, and often contradictory, we are satisfied that there exists a good possibility that Petitioner's operation will soon be phased out and that the sewage will be diverted to the new facility. However, a contract for sale has not been signed and we will not

speculate as to the terms thereof or whether said terms will abate the violations. Further, it would be unwarranted, under the facts before us at present, to, in effect, order Petitioner to proceed with improvements which may never be used.

We feel that the most prudent remedy in the instant cause is to grant a brief variance. It appears that the critical issues of fact will be resolved shortly. At that time the parties will be in a position to put before this Board a clear presentation of the circumstance which have evolved. Petitioner is put on notice that should it seek a variance in the future to operate the subject plant, a clear and definite program for the abatement of all of the violations caused by its total operation will be necessary before favorable action by this Board may be expected.

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

ORDER

IT IS THE ORDER of the Pollution Control Board that Petitioner, Apple Orchard Utility Company, Inc., be granted a variance to operate its sewage treatment plant for a period of 90 days from the date of this Order.

IT IS SO ORDERED.

Mr. Dumelle and Dr. Odell dissent.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, certify that the above Opinion and Order was adopted on this 14th day of February, 1974 by a vote of 3-2.

