ILLINOIS POLLUTION CONTROL BOARD
August 22, 1972

THE VILLAGE OF DE SOTO)
)
)
v.) PCB 72-224
)
ENVIRONMENTAL PROTECTION AGENCY)

William G. Ridgeway for The Village of DeSoto;
Thomas J. Immel, Assistant Attorney General, for
the Environmental Protection Agency.

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

By letter to the Agency dated May 18, 1972 the Village of De Soto in effect seeks a variance from the requirement of Rule 405 of Chapter 3 of the Water Pollution Control Regulations requiring that after July 31, 1972 no effluent shall exceed 400 fecal coliform per 100 ml. Petitioner says it will be able to comply with the effluent standards for fecal coliform by July of 1973 when it hopes to install and have in operation an upgraded sewage treatment plant. The petition asserts that to provide temporary chlorination facilities pending completion of the upgraded plant would be "most uneconomical and unwise" and that "there is inadequate space facilities to provide for chlorination at the present site."

Petitioner presently treats its wastewater by means of a single cell lagoon having an area of 8.7 acres and a 3 foot water level. The effluent which is the subject of this petition is discharged to the Little Muddy River.

At the public hearing, held July 21, 1972, Petitioner waived the statutory 90 day period for Board decision under Section 38 of the Act (R.5), and the parties stipulated that the following levels of fecal coliform were present in samples taken by the Agency on the dates indicated (R. 2-3, 5):

March 16, 1970	260/100 ml
May 19, 1970	180/100 ml
April 28, 1971	100/100 ml
March 8, 1972	100/100 ml
June 2, 1972	400/100 ml
and	
June 23, 1971	4000/100 ml
December 9, 1971	4000/100 ml
January 12, 1972	6000/100 ml
May 3, 1972	11000/100 ml

As will be apparent, the fecal coliform levels for the last four listed samples exceed the 400 limit permitted by the regulations. In its recommendation, filed on July 13, 1972 before the

hearing, the Agency characterized these excessive coliform levels as "not outrageously high", a reference no doubt to the fact that even the highest measured level of 11,000 is far below the estimated average 5 to 10 million level which may be attributed to the feces from a single person.* The Agency's recommendation also acknowledged that the effluent was not presently causing any violations of the fecal coliform standards set for the Little Muddy River.

A consulting engineer for the Village testified at the hearing that pursuant to request made by the Village in May of 1970 he prepared an engineering report and layout calling for installing two additional lagoon cells and a chlorination tank (R. 10), which would have permitted the effluent to meet all standards (R. 11). The original construction cost was estimated to be $56,000. When land and administrative costs were added to this, the total was $96,500. (R. 12). But the Village was unable to purchase the necessary land "for a reasonable price" (R. 12).

The engineer said that he is now studying the possibility of using a different type treatment plant (contact stabilization with filtration and chlorination) which could be built on the existing lagoon ground (R. 13). A rough cost estimate of $211,000. has been made, and the Village is proceeding with a preliminary design to be submitted to the Agency for approval (R. 14). Estimated time of completion of the project is about one year after letting of the contract (R. 14-15). Applications have been made for Federal and State grants (R. 15), which applications are still pending. The witness said it was doubtful that such an upgraded plant could be built and in operating condition by July 1, 1973 (R. 15).

The difficulty we have with this case is that the record fails to show why it is that temporary chlorination facilities cannot be installed now, or how such an immediate installation might work an arbitrary or unreasonable hardship on Petitioner. Aside from the conclusory statement of the engineer for the Village that "the only place that they can chlorinate at the present location is right adjacent to the road which is going to be very very difficult and cause a hardship" (R. 19), we find nothing in the record on the point. The only cost data in the record has to do with the ultimate costs of providing permanent treatment facilities.

As Petitioner is well aware, our Board Procedural Rule 401 (a) (2) requires a petition for variance to set forth "a description of the costs that compliance would impose on the petitioner and others". While the instant petition as filed in this case is conclusory and therefore deficient in this respect, this short-

*A Practical Guide to Water Quality Studies of Streams by F.W. Kittrell, U.S. Department of the Interior, 1969, pp. 97, 127.

coming in no wise excuses the failure of proof. The situation is particularly aggravating because Petitioner was warned by the Agency of this problem of proof in advance of the hearing, viz:

> "Petitioner has provided no cost estimates nor precise technical reasons as to why it is actually unfeasible to install the necessary facilities to consistently produce an effluent of 400 or less fecal coliform per 100 ml by the July 31, 1972 deadline date." (par. 6 of Agency Recommendation)

Yet the record is silent as to what the costs would be of compliance on a temporary basis pending completion of permanent upgraded sewage treatment facilities.

Because of Petitioner's failure to prove its costs of temporary compliance we must deny the petition as unsupported by a showing of the requisite arbitrary or unreasonable hardship. Petitioner may prepare and file a new petition for variance, if it so desires, accompanied by a verified showing (e.g. by affidavit) of the necessary cost information. In this event we will await the Agency recommendation and then decide whether any further public hearing is necessary.

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

ORDER

The petition for variance is denied without prejudice to the filing of a new petition in accordance with the Act and Procedural Rules and as described in the above opinion.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above Opinion and Order this 22nd day of August, 1972, by a vote of 5-0.

Christan L. Moffett

Christan L. Moffett, Clerk
Illinois Pollution Control Bo