

ILLINOIS POLLUTION CONTROL BOARD  
September 21, 2006

C&F PACKING COMPANY, INC., an Illinois )	)	
corporation,	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	PCB 06-53
	)	(Variance - Water)
ILLINOIS ENVIRONMENTAL )	)	
PROTECTION AGENCY, COUNTY OF )	)	
LAKE, VILLAGE OF LAKE VILLA, and )	)	
VILLAGE OF FOX LAKE,	)	
	)	
Respondents.	)	

ORDER OF THE BOARD (by T.E. Johnson):

On October 28, 2005, C&F Packing Company, Inc. (C&F), an Illinois corporation, filed a variance petition for its manufacturing facility located at 515 Park Avenue in Lake Villa, Lake County. C&F produces custom private label sausage products, pizza toppings, and other cooked meat items for the food industry. On December 14, 2005, the County of Lake (Lake County) filed a motion to join both the Village of Lake Villa (Lake Villa) and the Village of Fox Lake (Fox Lake) as respondents to this proceeding.

Since December 2005, the Board's hearing officer has conducted numerous status conferences with the parties in this case, including one as recently as September 14, 2006. During these conferences, the parties have represented to the hearing officer that settlement was being pursued. At the parties' request, the Board has reserved ruling on a number of filings made early on in this proceeding while the parties have been trying to settle.<sup>1</sup>

During the last status conference call one week ago, the parties informed the hearing officer that settlement discussions were progressing. In addition, C&F represented again that it would not be filing a response to Lake County's motion for joinder, and the parties agreed to another extension of the deadline for filing responses to all other outstanding motions, this time to November 16, 2006. The parties also indicated to the hearing officer that settlement might be aided if the Board now ruled on Lake County's motion for joinder.

Before ruling on Lake County's motion for joinder, the Board must first determine whether C&F's variance petition contains sufficient information so as to properly put this matter

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<sup>1</sup> For example, besides C&F's petition and Lake County's motion for joinder, Lake County and the Illinois Environmental Protection Agency have each filed a motion to dismiss, respectively on November 23, 2005 and December 12, 2005.

before the Board. *See* 35 Ill. Adm. Code 104.228. For the reasons below, the Board accepts C&F's petition and grants Lake County's unopposed motion for joinder.

### **PETITION FOR VARIANCE**

By its petition for variance, C&F seeks relief from 35 Ill. Adm. Code 309.222(b). Section 309.222(b) is housed in Subpart B of the Board's Part 309 water pollution permit rules. Generally, Subpart B addresses permits to construct, modify, and operate treatment works, pretreatment works, sewers, wastewater sources, and other discharges not required to have National Pollutant Discharge Elimination System (NPDES) permits. *See* 35 Ill. Adm. Code 309.201. Section 309.222(b) requires that a sewer construction or modification permit application include various certifications. These include a certification by the owner of any intermediate receiving sewer that adequate capacity is available to transport the wastewater discharge that would be added if the permit application were granted.

C&F asserts that the requested relief is necessary because Lake County, as owner of an intermediate receiving sewer, is inappropriately withholding its certification of a permit application that C&F wishes to submit to the Illinois Environmental Protection Agency (Agency). Petition at 1. According to C&F, Lake County is refusing to certify the application because of a dispute Lake County has with Lake Villa over the payment of sewer connection fees. C&F contends that it seeks this variance because of Lake County's "improper linking" of the permit application certification with the sewer connection fee dispute. *Id.* at 2. C&F does not request a hearing on the petition, asserting that the evidence contained in the petition adequately advises the Board of the pertinent facts and legal issues. *Id.* at 28.

The Board finds that the petition meets the content requirements of 35 Ill. Adm. Code 104.204 and accepts the petition. The Agency must investigate the petition for variance and file its recommendation with the Board. *See* 35 Ill. Adm. Code 104.216. The recommendation must be filed at least 30 days before the date of any hearing, unless the Board or the hearing officer orders otherwise. *Id.* C&F will then be allowed 14 days after service of the Agency recommendation to file a response to the recommendation. *See* 35 Ill. Adm. Code 104.220. In addition, the Agency must file with the Board a certification that the Agency caused the required newspaper publication of notice of C&F's petition. *See* 35 Ill. Adm. Code 104.214(f).

The Board will hold a hearing under any of the circumstances specified in 35 Ill. Adm. Code 104.234, including upon any person's timely written hearing request and objection to granting the requested variance. *See* 35 Ill. Adm. Code 104.234(d). The hearing officer must set the matter for hearing in accordance with the requirements of the Environmental Protection Act (415 ILCS 5 (2004)) and the Board's procedural rules. It is the responsibility of the hearing officer to guide the parties toward prompt resolution of this matter, through whatever further status calls and hearing officer orders he determines are appropriate. Any hearing will be scheduled and completed in a timely manner, consistent with the decision deadline (*see* 415 ILCS 5/38(a) (2004)), which only C&F may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, C&F "may deem the request granted." 415 ILCS 5/38(a) (2004). On December 16, 2005, C&F filed an open waiver of the decision deadline. *See* 35 Ill. Adm. Code 101.308(c)(1).

### **MOTION FOR JOINDER**

Lake County's joinder motion seeks to add Lake Villa and Fox Lake as respondents to this variance proceeding. Lake County states that the requested variance, if granted, would facilitate C&F's "expanded sewer discharges into the County's Northwest Interceptor and, ultimately, the Fox Lake Wastewater Treatment Plant." Motion (Mot.) at 1. According to Lake County, Lake Villa and C&F owe Lake County nearly one-half million dollars in sewer connection fees relating to C&F's operations. *Id.* at 2.

Lake County argues that for the Board to provide a complete adjudication, Lake Villa and Fox Lake should be joined as respondents to this proceeding. Mot. at 2-3. As to Lake Villa, the motion for joinder states that C&F's entitlement to use Lake County's Northwest Interceptor is "entirely derivative" of (1) the agreement between Lake County and Lake Villa, which "makes specific capacity in the County's Northwest Interceptor available to certain Lake Villa customers," and (2) Lake Villa's compliance with the terms of that agreement. *Id.* Lake County argues that the overdue connection fees "is as much a matter of concern to Lake Villa as it is to C&F Packing" because Lake Villa is responsible for collecting and remitting the sewer connection fees to Lake County. *Id.* at 3.

According to Lake County, if the Board grants C&F's requested variance and C&F is thereby able to obtain a permit from the Agency without the County's certification as the intermediate sewer owner, Lake Villa would be affected. Specifically, Lake County maintains that Lake Villa would be affected by, among other things, the following: (1) the resulting increased discharge, which "directly impacts Lake Villa's local collection system" because Lake Villa is the local sewer provider for C&F and the local interceptor owner; and (2) potential Board conditions on the grant of variance. Mot. at 3-4. Lake County concludes that Lake Villa therefore has a "direct interest in the outcome of this proceeding." *Id.* at 4.

As to Fox Lake, the motion for joinder states that Fox Lake serves as the treatment authority for the additional discharge that C&F seeks through its permit application. Mot. at 4. Fox Lake, continues Lake County, receives almost 90% of the connection fees paid to Lake County under Lake County's agreement with Lake Villa. *Id.* at 4-5. According to Lake County, Fox Lake:

certainly has an interest and also stands to lose if, because of any variance granted by the Board, additional flows are sent to the Fox Lake Wastewater Treatment Plant without commensurate fees being paid. *Id.* at 4.

Lake County adds that any condition the Board might impose on a granted variance, such as conditions concerning discharge amounts and flow qualities, will impact Fox Lake. Mot. at 4-5. Lake County concludes that Fox Lake should therefore be joined to enable the Board to completely and properly adjudicate the issues before it. *Id.* at 5.

The Board notes that under its procedural rules, "joinder" is defined as "the procedure by which the Board adds a person, not originally a party to an adjudicatory proceeding, as a party to

the proceeding.” 35 Ill. Adm. Code 101.202. Section 101.403(a) of the Board’s procedural rules provides:

- a) The Board, on its own motion or the motion of any party, may add a person as a party to any adjudicatory proceeding if:
  - 1) A complete determination of a controversy cannot be had without the presence of the person who is not already a party to the proceeding;
  - 2) The person who is not already a party to the proceeding has an interest that the Board’s order may affect; or
  - 3) It may be necessary for the Board to impose a condition on the person who is not already a party to the proceeding. 35 Ill. Adm. Code 101.403(a).

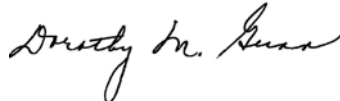
The Board finds that under these provisions, both Lake Villa and Fox Lake should be added as parties to this variance proceeding. Neither C&F nor the Agency opposes Lake County’s motion for joinder. *See* 35 Ill. Adm. Code 101.500(d). Further, counsel for Lake Villa and Fox Lake represented to the hearing officer that they were served with the joinder motion and would not be filing any responses. Under these circumstances, the Board grants Lake County’s motion for joinder and accordingly adds as respondents Lake Villa and Fox Lake. Future filings in this proceeding must reflect the caption of this order, which has been amended consistent with Board’s ruling on the joinder motion.

### CONCLUSION

The Board finds that C&F’s variance petition meets the content requirements of the Board’s procedural rules. The Board therefore accepts the petition. The Board also grants Lake County’s unopposed motion for joinder, adding Lake Villa and Fox Lake as respondents to this variance proceeding. As appropriate, the Board will rule on other currently pending motions when the response time, as extended, has run.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on September 21, 2006, by a vote of 4-0.



Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board