

ILLINOIS POLLUTION CONTROL BOARD
December 15, 1983

AMERICAN LEGION POST NO. 764)
OF TOLEDO, ILLINOIS and the)
VILLAGE OF TOLEDO, a municipal)
corporation,)
)
Petitioners,)
)
v.) PCB 83-99
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

OPINION AND ORDER OF THE BOARD (by W. J. Nega):

This matter comes before the Board on the petition for variance of the American Legion Post No. 764 of Toledo, Illinois (American Legion) filed on July 26, 1983 as amended September 14, 1983; October 21, 1983; and November 14, 1983. Variance is requested from the restricted status placed upon the sewer system of the Village of Toledo (Village) by the Illinois Environmental Protection Agency (Agency) and from 35 Ill. Adm. Code 309.241(a) to allow the construction and operation of a 470-foot sewer extension pursuant to Agency permit to serve a proposed new American Legion home.

On August 18, 1983, the Agency filed its Recommendation that variance be denied because the Petitioners provided insufficient information as to environmental impact and arbitrary or unreasonable hardship. Hearing was waived and none has been held.

In a letter to the Agency dated October 14, 1983, the President of the Board of Trustees of the Village of Toledo submitted further details on the upgrading of the Village's sewer system. In a letter to the Agency dated October 17, 1983, the Petitioners' attorney submitted additional information on the financial hardships claimed by the Petitioners. These letters were forwarded by the Agency to the Board and received by the Board on October 21, 1983.

In a cover letter from the Agency which was attached to the two letters from the Petitioners, the Agency stated that the "Petitioners did not include a sworn affidavit with the enclosed letters...consequently, these letters would not serve to amend the petition in this proceeding under 35 Ill. Code 104.124". Accordingly, on November 14, 1983, the Petitioners submitted a Second Amended Petition for Variance which included various sworn affidavits and additional information.

On November 18, 1983, the Board entered an Interim Order which mandated that the Agency file its response, if any, to the Second Amended Petition for Variance within 10 days of the date of the Interim Order in order to expedite proceedings.

On November 28, 1983, the Agency filed its First Amended Recommendation (Rec.) which recommended that the Board grant the requested variance, subject to certain conditions.

The Village of Toledo presently owns and operates a wastewater treatment plant (WWTP) which includes 3 lift stations and a 6-acre, single-cell lagoon. The Village's wastewater treatment facilities have a design average flow of 0.093 million gallons per day (MGD) and are rated for a population equivalent (p.e.) of 930. (Rec. 3-4).

Discharge monitoring reports submitted by the Village pursuant to its NPDES Permit No. IL 0031445 during the months of July, 1982 through June 1983 have indicated, based on once per month grab samples, that BOD₅ concentrations have ranged between 24 mg/l and 46 mg/l, while levels of total suspended solids have fluctuated between 21.6 mg/l and 37 mg/l. (Rec. 4). Similarly, during this same time period, concentrations of ammonia nitrogen have been between 2.3 mg/l and 3.4 mg/l. (Rec. 4).

On these monthly discharge monitoring reports, flow has been consistently reported as being 0.15 MGD. However, the exact flow involved is not readily ascertainable, because the Village has no flow measuring device to take accurate measurements and the clocks on pumps in the pump station have been found by the Agency to be "inoperative much of the time." (Rec. 4).

On January 19, 1982; April 9, 1982; June 3, 1982; August 5, 1982; October 20, 1982; December 27, 1982; and May 16, 1983, Agency personnel took grab samples of the Village WWTP's effluent. Testing of these water samples disclosed that, on the previously specified dates, BOD₅ concentrations ranged between 3 mg/l and 55 mg/l, while concentrations of total suspended solids fluctuated between 3 mg/l and 202 mg/l (with the anomalous high figure being reported on June 3, 1982). Additionally, ammonia nitrogen levels varied from 0.17 mg/l to 19 mg/l, with lower levels (at, or under, 6.8 mg/l) being reported since June 3, 1982. (Rec. 5).

The Agency has indicated that it has received no reports or complaints pertaining to sanitary sewer overflows or basement back-ups in the Village of Toledo. (Rec. 5).

On February 14, 1983, the Agency issued Permit No. 1983-AB-1224 to the Village for the upgrading and expanding of its WWTP. Pursuant to this permit, a 2-cell, non-aerated lagoon will be created with chlorination, flow measurement equipment, and inter-

mittent sand filters. However, no sewer system rehabilitation work is planned by the Village. On July 15, 1983, contracts for the construction work on this project were approved, and final construction is expected to be completed on, or before, August 13, 1984. The Village has been awarded a combined Step 2/3 grant under the Construction Grants Program to help finance these WWTP improvements. (Rec. 6-7).

The American Legion has indicated that it is in the process of building a new Legion home at the edge of the Village, within the Village's corporate limits. However, this new home is 470 feet from the present sewer line in the Village. (2nd Amended Pet., p. 2). The American Legion has stated that the present Legion home will no longer be used after the new Legion home is completed and it will probably not be rented or sold for some time because it is unsuitable for a commercial business. (2nd Amended Pet., p. 2).

In reference to the environmental impact of the requested variance, the Petitioners have emphasized that "no new and additional sewage will be added to the present sewer system of the Village." (2nd Amended Pet., p. 2). Moreover, the Petitioners have stressed that "there are no residences, or other buildings, along the route of the proposed sewer" and indicate that no buildings (other than the proposed new American Legion home) "would be attached to the sewer at least until the sewer improvement work is completed and probably not for many years." (2nd Amended Pet., p. 2).

The currently utilized American Legion building, which is 25 feet x 100 feet, contains the following water fixtures: 1 kitchen sink, 2 stools, 2 lavatories, and 1 urinal. This older building uses, on average, less than 2,000 gallons of water per month (i.e., the minimum rate). The proposed new American Legion building, which will be 50 feet x 150 feet, will have 1 kitchen sink, 4 lavatories, 4 stools, and 2 urinals. (2nd Amended Pet., p. 2).

The Petitioners have emphasized the limited use of both the old American Legion building and the proposed new American Legion home. The building is primarily used to conduct American Legion meetings. Post 764 is a small organization which has only 152 members and no employees. Bingo is played in the building twice a week and there is a club room in the building for Legion members. Other than the waste from a small amount of cooking that will be done, human waste is the only material that will be discharged from the proposed new building into the Village sewer system.

Moreover, although the new building will be much larger than the old building and will have more toilet facilities, the same number of people are expected to use the new building (as no

more American Legion members are expected to join Post 764 and no more people are expected to be using the new facility). In the new building, it is anticipated that the equipment, facilities, furnishings, and other accoutrements will be nicer and that the atmosphere will be more comfortable and less crowded. (2nd Amended Pet., p. 3-4).

On November 25, 1974, the Agency sent the Village a letter to notify it of pending restricted status. On January 16, 1975, the Agency placed the Village's WWTP on restricted status because these "wastewater treatment facilities were being operated 10% in excess of the design organic capacity." (Rec. 2). Accordingly, under the restricted status imposed by the Agency, the Village's sanitary sewer system could not be extended more than 150 feet. Although the American Legion's proposed sewer extension will be via 8-inch pipe, the Petitioner feels that less than 1,500 [but see Agency Rec. pg.3 1500 gpd or more] gallons of sewage per day will be discharged into the Village's sewers from the new Legion building and no new sewage will be added to the present Village sewer system. The Petitioners feel that "the only non-compliance with the restricted status imposed by the E.P.A. on the sewer system of the Village is that the Legion building is 470 feet from the existing sewer line." (2nd Amended Pet., p. 3).

The Village of Toledo is presently in the process of improving and enlarging its sewer system and its 6-acre, single-cell lagoon. The Agency has approved the contract for the construction of improvements and work on the sewer improvement project has already begun. Although the scheduled project completion date is August 13, 1984, it is anticipated that the construction work will be completed well ahead of schedule. (2nd Amended Pet., p.3-4).

The Petitioners strongly contend that denial of the requested variance will cause an arbitrary or unreasonable hardship. In reference to financial hardship, it is pointed out that American Legion Post No. 764 (which only has 152 members) has "spent over \$65,000.00 and hundreds of hours of labor on a building that they cannot use because of the sewer restriction". (2nd Amended Pet., p.5). The cost of the new building is in excess of \$65,000.00 (with all labor having been donated) and The First National Bank in Toledo, Illinois presently holds a \$15,00.00 mortgage on the property which bears an interest rate of 13% per year. The Petitioners believe that it is an "unreasonable hardship" that "this interest and principal must be paid while the building cannot be used." (2nd Amended Pet., p.5). Thus, the American Legion feels that its substantial investment is now "a complete loss".

Additionally, the American Legion has noted that they are losing significant revenues from their bingo games because of the present situation. Because of a current lack of space and table

room in the older building, the American Legion and Legion Auxillary (which operate a bingo game in the present building twice a week) are not able to meet the needs of the bingo players and "this costs the Legion a large sum of money each week". (2nd Amended Pet., p. 5-6). Once the bingo games can be moved into the new building, this problem can be rectified and additional funds generated.

The American Legion has also delineated its insurance problems which are causing what it believes to be an arbitrary or unreasonable hardship. While the present insurance coverage on the new building is a "builders' risk", their insurance carrier "is now pressuring the agent as to why the building should not be removed from builders risk and written as a regular policy." (2nd Amended Pet., p. 5). Under such a regular policy, a vacancy permit would be needed for an "unoccupied building" and this would entail an extra premium which "probably could not be continued longer than four months." If this situation were to develop, the Petitioners have concluded that "the Legion could be in a position, until the Village sewer work is completed, of being without insurance on the new building, which situation would be a violation of the mortgage terms and might cause a foreclosure of the mortgage". (2nd Amended Pet., p. 5).

Although the Agency does not fully concur with Petitioner's estimate that its discharge will be less than 1500 gpd, the Board notes that, even if Petitioner's loading fell within the single building exemption provided in 35 Ill. Adm. Code 309.202(b)(2), the exemption is not applicable in the present case because, although there are no other buildings currently along the proposed sewer extension, the Village intends to construct the extension large enough to be able to possibly service additional properties at some future date i.e., the sewer is apparently designed and intended to have the capacity to serve more than a single building.

In its First Amended Recommendation, the Agency has recommended that the Board grant the requested variance, premised on two conditions. (Rec. 1; 8). One condition would allow the Village of Toledo to construct the sewer to serve the new American Legion Home but provides that "no other properties, building, lots, service taps, hook-ups, or the like are served". (Rec. 8). The second condition would mandate that the old American Legion Home remain vacant until the sewage treatment plant has been upgraded.

The Petitioners have stated that, although the American Legion had knowledge of the existence of the restricted status on the Village's sewer system before construction of the new Legion building, the American Legion reasonably expected that all sewer improvement work by the Village would be finished well before the Legion's new building was completed. (2nd Amended Pet., p. 4).

The American Legion has noted that it acted in good faith and in reasonable reliance on the expected completion of improvements in the Village's sewer system because: (1) American Legion officers contacted Village officials many times about the progress of the sewer work and on the status of the Federal Grant application of the Village, and were informed "that the project was expected to be approved in good time and that the work would soon start"; (2) the Village Engineer assured the Legion officers that he was "doing everything he could" to expedite the project; and (3) all indications were that there was "good reason to expect the Village sewer improvement to be completed long before" the new Legion building would be finished. (2nd Amended Pet., p. 4).

The Agency has asserted that the hardship is largely self imposed, except the mortgage payments to some degree. The Board believes, however, that the particular circumstances of this case justify a finding of arbitrary or unreasonable hardship. The Legion Post substantially changed its position to its detriment in reasonable reliance that the improvements in the Village's sewer system would be completed long before the new Legion building would be finished.

As the Agency itself has noted, "problems arising in the course of reviewing the Village of Toledo's permit application for treatment plant improvements may account for the American Legion Post's expectations of earlier lifting of restricted status". (Rec. 7).

Regarding environmental effects, the Agency has indicated that "the lack of reported bypasses, overflow, or back-ups and the short time period until expected completion of treatment plant improvements" will serve to limit any adverse environmental impact if the requested variance is granted. (Rec. 6). Accordingly, the Agency believes that the "potential harm to the environment is so minimal in this case" that the requested relief is proper. (Rec. 7). The Agency's assessment, with which the Board agrees, is premised on the conditions that there be no more hook-ons and that the old building remain vacant during the variance period. While the Board usually imposes conditions only on the primary petitioner, in this case the Board finds it necessary to impose a condition on the Village to assure the avoidance of environmental harm, especially given the marginal basis for a finding of arbitrary or unreasonable hardship.

Accordingly, the Board finds that denial of variance would impose an arbitrary or unreasonable hardship and will grant the requested relief, subject to the conditions delineated in the Order.

ORDER

The Petitioners, the American Legion Post No. 764 of Toledo, Illinois and the Village of Toledo, are hereby granted a variance from 35 Ill. Adm. Code 309.241(a) to allow the construction and operation of a 470-foot sewer extension to the new American Legion Home, subject to the following conditions:

1. This variance shall expire on December 30, 1984, or upon the lifting of restricted status, whichever occurs first.

2. The Village of Toledo shall be allowed to construct the sewer to serve the new American Legion Home provided no other properties, building, lots, service taps, hook-ups, or the like are served.

3. The new American Legion Home shall be the only allowed sewer connection to this sewer until the treatment plant is upgraded, provided that the old American Legion Home remains vacant until the sewage treatment plant has been upgraded.

4. Within 45 days of the date of this Order, the Petitioners shall execute and forward to the Illinois Environmental Protection Agency Division of Water Pollution Control, Compliance Assurance Section, 2200 Churchill Road, Springfield, Illinois 62706, a Certificate of Acceptance and Agreement to be bound to all terms and conditions of this variance. This 45 day period shall be held in abeyance for any period this matter is being appealed. The form of the certificate shall be as follows:

CERTIFICATE

I, (We), _____, having read the Order of the Illinois Pollution Control Board in PCB 83-99 dated December 15, 1983, understand and accept the said Order, realizing that such acceptance renders all terms and conditions thereto binding and enforceable.

American Legion Post No. 764
of Toledo, Illinois

Village of Toledo

By: Authorized Agent

By: Authorized Agent

Title

Title

Date

Date

IT IS SO ORDERED.

Chairman J. Dumelle concurred.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 15th day of November, 1983 by a vote of 7-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board