

ILLINOIS POLLUTION CONTROL BOARD
November 20, 1980

DIAMOND DEVELOPMENT CO. and CITY OF ALTAMONT,)
)
) Petitioner,)
)
) v.) PCB 80-147
)
) ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,)
)
) Petitioner.)

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

This matter comes before the Board on the petition for variance filed August 11, 1980 and amended September 15, 1980 by Diamond Development Co. (Diamond) and the City of Altamont (City). Petitioners seek variance from Rule 962(a) of Chapter 3: Water Pollution (Chapter 3) in order to obtain an operating permit for a City-owned sanitary sewer extension serving two eight-unit apartment buildings. On October 20, 1980 the Environmental Protection Agency recommended that this variance be granted with conditions. Hearing was waived, and none has been held.

The City of Altamont, which is located in Effingham County, owns and operates two wastewater treatment plants. The City's South Sewage Treatment Plant was placed on restricted status September 9, 1975. At that time, the plant was organically overloaded, receiving 1535 P.E. when its design maximum was 1330. Agency records reveal that during much of 1978 and 1979 the plant was also hydraulically overloaded receiving flows in excess of its 133,000 gpd design maximum. Sewage has been bypassed on at least three occasions. The receiving stream, in 1977, was found to be in a polluted state (Rec. 1-3).

The two buildings for which variance is sought, as well as the sanitary sewer extension involved, were constructed and occupied in summer, 1978. This sanitary sewer extension is tributary to the restricted South plant. The sewer receives a discharge of approximately 5600 gpd from the buildings' 16 units. Then-owners Richard Ackerman and Gerald and John VanAlst allegedly failed to obtain sewer construction and operating permits. (This matter is the subject of a still-pending enforcement action (PCB 79-231) against the City and Gerald VanAlst.)

Diamond purchased these buildings on May 1, 1979. Diamond states that, at that time, it believed that all necessary permits had been obtained, and that it was further unaware of the City's restricted status. The City states that at the time of construction

and initial operation of the sewer, that it had believed no permits were necessary for connections of that kind. Thus, both petitioners now seek a permit for the sewer extension which has been in operation since 1978.

Diamond alleges that denial of variance would impose an arbitrary and unreasonable hardship both on it, its tenants, and on the City. In support thereof, Diamond states that the apartment units were not designed or equipped for any method of sewage disposal other than the one in use. Consequently, denial of variance would render the apartments uninhabitable, and would therefore "effectively waste the considerable sums... expended [by Diamond] thus far in good faith and in reasonable reliance upon the representations and assurances made by seller." Diamond does not present a detailed accounting of such sums, but does indicate that it has invested \$350,000 including a mortgage of approximately \$300,000 that is held by the Farmer's Home Administration (Pet. 4-5).

Thirteen out of the sixteen units are currently occupied, and are being rented under the FmHA's Rural Rental Housing Program, which enables lessees to receive Federal housing subsidy benefits. It is asserted that there is a real and substantial need for low income housing in the area, and that denial of variance would therefore be a hardship on the City, as well as on the tenants who would be displaced (Pet 4-6).

The City is in the process of upgrading its treatment plant and of rehabilitating its sewage collection system with the aid of grant funds. The upgraded plant is expected to be operational in May, 1982. Diamond asserts that, in the interim, its discharge will cause no additional harm to the environment (Pet. 6-7, Ex. F, G).

The Agency recommends grant of variance, subject to conditions requiring water conservation, and prohibiting further connections until restricted status has been lifted (Rec. 4).

The Board concludes that variance relief is appropriate here. The effect of a grant of variance here is to "cure" a connection which is alleged to have been improperly made in 1978. The hydraulic load to the South plant may in fact be decreased if conservation devices are required. Given the nature of the housing at issue, it would be an arbitrary and unreasonable hardship to in effect disapprove operation of a sewer which was connected in error, an error which neither Diamond nor the tenants committed. Variance is granted subject to the conditions outlined in the attached order.

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

ORDER

Petitioners, Diamond Development Co. and the City of Altamont, are hereby granted variance from Rule 962(a) of Chapter 3: Water Pollution, subject to the following conditions:

1. This variance is granted solely for connection of the two eight-unit apartment buildings already serviced by the existing sewer extension. No additional connections may be made.

2. Within 60 days of the date of this Order, Diamond shall install, in each apartment unit, plastic dams in each water closet and water saving faucets and shower heads, if such devices are not currently in place.

3. Within 90 days of the date of this Order, Diamond shall certify its compliance with condition (2) above, to the Agency, in writing.

4. The City shall operate and maintain its South Treatment Plant in such manner as will minimize bypassing of effluent.

5. Within forty-five days of the date of this Order, each Petitioner shall execute and forward to the Illinois Environmental Protection Agency, Division of Water Pollution Control, Variance Unit, 2200 Churchill Road, Springfield, Illinois, 62706, a Certificate of Acceptance and Agreement to be bound to all terms and conditions of this variance. This forty-five day period shall be held in abeyance for any period this matter is being appealed. The form of the Certification shall be as follows:

CERTIFICATION

I, (We), _____, having read and fully understanding the Order in PCB 80-147, hereby accept that Order and agree to be bound by all of its terms and conditions.

PETITIONER _____
SIGNED _____
TITLE _____
DATE _____

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order were adopted on the 25th day of November, 1980 by a vote of 5-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board