

ILLINOIS POLLUTION CONTROL BOARD
July 8, 1976

CITY OF LINCOLN,)
)
) Petitioner,)
)
) v.) PCB 76-110
)
 ENVIRONMENTAL PROTECTION AGENCY,)
)
) Respondent.)

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

This matter comes before the Board on the variance petition filed April 23, 1976 by the City of Lincoln seeking relief from Rule 602(d)(3) of Chapter 3: Water Pollution Rules and Regulations. An Agency Recommendation was filed with the Board on June 1, 1976.

Rule 602(d)(3) establishes a compliance date of December 31, 1975 for Rule 602(c), which requires in part that all combined sewer overflows shall be given sufficient treatment to prevent pollution or a violation of applicable water quality standards.

The City of Lincoln is engaged in the collection, treatment and disposal of wastewater within the City and approximately two-thirds of all sewered portions of the City is served by combined sewers. The treatment plant has a design capacity of 2.5 MGD with an average dry weather flow of 2.25 MGD. All wastewater in the system is intercepted and subject to treatment at the plant to an extent of from two and one-half to five times the average dry weather flow.

The City's NPDES permit contains a schedule for bringing the combined sewer overflows into compliance and the schedule keys all dates to those after which grant funds have become available. Petitioner has applied for grant funds for upgrading its sewage treatment facilities and for the treatment of combined sewer overflows. Petitioner has been awarded Step I and Step II funds for the sewage plant improvements and has received Step I funds for the sewer system evaluation survey. Step II funds for the design of excess flow treatment facilities, including combined sewer overflows, will not be awarded until an evaluation of the facilities plan is complete, probably by December of 1976. No Step III construction grant funds have been awarded to Lincoln for either the treatment plant improvements or for excess flow treatment facilities.

The City of Lincoln alleges that it has been working diligently to bring its combined sewer overflows into compliance but that delays caused by the administration of the grant program have prevented Lincoln from presently attaining compliance with Rule 602(d)(3). The City alleges an unreasonable and arbitrary hardship would be placed upon Lincoln if it were forced to proceed with the sewer and treatment plant improvements prior to obtaining assistance from existing grant funds.

The Agency has recognized the fact that many municipalities and sanitary districts throughout the State have not met and cannot presently meet the December 31, 1975 compliance date as set by Rule 602(d)(3). On December 22, 1975, the Agency filed an Amended Petition for Regulatory Change (R75-15) with the Board specifically requesting that the date for complying with Rule 602(d)(3) be extended until July 1, 1977, provided a grant application had been filed before December 31, 1975. Although the Board has not taken final action on this proposal, at its May 20, 1976 meeting, the Board authorized for publication a proposed final draft of the Rule change which would adopt the substance of the Agency's amendatory proposal. The economic impact hearings have yet to be conducted in this matter.

In view of the foregoing, the Board is disposed to grant the City of Lincoln the relief requested. We believe an arbitrary and unreasonable hardship would be placed on the City by requiring the massive capital outlays necessary for compliance without first allowing the City to obtain assistance from existing grant programs, and particularly so when the City would be precluded from any reimbursement from State/Federal grant funds if the City were to proceed in advance of a particular grant award (The Clinton Sanitary District, PCB 75-498; the Sanitary District of Elgin, PCB 75-501).

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

ORDER

1. The City of Lincoln is granted variance from the compliance date for combined sewer overflows as established by Rule 602(d)(3) of the Water Pollution Rules and Regulations. Such variance is granted until July 1, 1977, or until the Board adopts an Amendment to the Regulations in consideration of the Agency Regulatory Proposal (R75-15), whichever is later.

2. The City is required during this period to maintain optimum operating efficiency and convey as much combined sewer flow to its plant as is possible.

3. This variance will immediately terminate if the City is offered a grant during this period and the City does not respond with appropriate action to bring it into compliance. The City will be required to submit its completed facilities plan by December 1, 1976.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 8th day of July, 1976 by a vote of 5-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board