

ILLINOIS POLLUTION CONTROL BOARD
October 18, 1979

ROSSMOOR ASSOCIATES,)
an Illinois Limited Partnership,)
)
Petitioner,)
)
v.) PCB 79-171
)
ENVIRONMENTAL PROTECTION AGENCY,)
)
Respondent.)

OPINION OF THE BOARD (by Mr. Dumelle):

Petitioner requested a variance from Rules 604, 951 and 962(a) of Chapter 3: Water Pollution to provide for the connection of various housing and commercial units to the DuPage County Lisle-Woodridge sewage treatment plant which is currently on restricted status. The Agency recommended that the variance be granted subject to conditions. No hearing was held. On October 4, 1979 the Board granted a limited variance. This Opinion supports the Board's Order.

Petitioner is developing a 400 acre multiple use complex in the Village of Woodridge (Woodridge) with a variety of housing options and commercial facilities. Petitioner has entered into an annexation agreement with Woodridge covering the proposed development. As part of that agreement, Woodridge warranted that it had access to adequate sewage treatment capacity to provide treatment for Petitioner's complex through 1982. Petitioner has already completed 13 units in its development and has plans for 736 more housing units and various office and commercial sites. Petitioner claims that it could not have known that its plans would be halted by the Agency's May 31, 1979 decision to place the Lisle-Woodridge sewage treatment plant on restricted status. Since that date the DuPage County Board has authorized the construction of improvements to expand the capacity of the Lisle-Woodridge plant by 1.4 million gallons per day (MGD).

Petitioner claims that it incurred severe losses from 1974 to 1977. It expects to recoup its losses by the end of 1982. Petitioner estimates it must generate \$12 million in gross annual sales to service a \$1.4 million first mortgage and break even on its other \$6.1 million obligations. Petitioner claims that the limitations of restricted status could bankrupt the project. Petitioner feels that it has no alternative to connection to the Lisle-Woodridge plant. Petitioner points to a loss of tax revenues to DuPage County and Woodridge, land and monetary donations to Woodridge

School District 68, reasonably priced needed housing, a \$6.4 million investment, \$1.0 million building permit and annexation fees, employment for 25 persons with 60 dependents, income for 31 subcontractors with 1550 employees, and additional in-kind contributions if the project is not completed. Petitioner needs to complete foundation work before the onset of winter weather to maintain financing for construction loans.

Petitioner anticipates that 264 units could be completed and delivered by the end of 1980. Projected flow from these units is 0.0756 MGD. Additional flow of 0.1102 MGD is expected by the end of 1982. When the Agency imposed restricted status on the 6.94 MGD (design capacity) Lisle-Woodridge plant, outstanding additional permitted capacity was estimated at 2.916 MGD over the next two years. Petitioner claims that when this flow is reduced by permit expirations, actual occupancy, duplication of non-residential flow, and anticipated wastewater flows, capacity as of September, 1982 will be slightly less than the present design flow of 6.94 MGD. Petitioner points to recent improvements in operation and maintenance, short term plans to expand plant capacity by 1.7 MGD, and long term plans to permanently expand plant capacity to 10.0 MGD by September, 1982. Petitioner feels that these improvements should protect effluent quality and that additional upstream improvements should enhance water quality in the East Branch of the DuPage River.

In its Recommendation the Agency indicates that the Lisle-Woodridge plant is presently hydraulically overloaded and will remain so even after the interim expansion of 1.4 MGD is completed. The Agency has been advised that the August, 1979 average flow rate was 10.1 MGD. The Agency knows of 1.7 MGD in outstanding permits and has been advised that local municipalities tributary to the Lisle-Woodridge plant have issued additional permits. Recent discharge monitoring reports show consistent NPDES violations. The Agency feels that Petitioner's present plans to add 264 units by the end of 1980 should not be halted. As conditions to variance relief, the Agency feels that Petitioner should be required to provide lists of all permits to construct buildings, permits to construct and operate sewer connections, and all plats which have been approved by Woodridge since July, 1977 or are presently pending. Additionally the Agency wants Petitioner to state the facts behind Woodridge's warranty of sewage treatment capacity in the annexation agreement and to furnish copies of agreements between Woodridge and DuPage County on permit issuance.

Petitioner concurred in the Agency's Recommendation and asked that the Agency be ordered to issue permits for the 264 units scheduled for completion by the end of 1980.

The Board concluded that denial of a variance to the extent recommended by the Agency would constitute arbitrary or unreasonable hardship. Petitioner has proceeded in good faith, and the Board has not been advised that Petitioner could or should have known about the status of the Lisle-Woodridge plant. Petitioner's losses will be significant if its project is not allowed to proceed. However, the status of the overloaded Lisle-Woodridge plant cannot be overlooked. The Board has limited relief to 264 units so that it can remain advised of DuPage County's progress in resolving the problems at this plant. The Board concludes that the Agency's additional requested conditions are not reasonable. Petitioner should not be required to detail Woodridge's accounts or explore the reasons behind the stated warranty. The Agency should be able to acquire the information it needs through direct contact with Woodridge and DuPage County.

Nowhere in this record is the reason given for the issuance of permits in excess of plant capacity.

The Board's Order does not address Rules 604 and 951 since relief from Rule 962 renders additional relief unnecessary. In this case the Board has not seen any reason why the Agency should be ordered to issue any permits. Relief from Rule 962(a) and cooperation with the Agency should pave the way to resolution of Petitioner's immediate problem.

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

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion was adopted on the 18th day of October, 1979 by a vote of 4-0.


Christan L. Moffett, Clerk
Illinois Pollution Control Board