

ILLINOIS POLLUTION CONTROL BOARD  
May 1, 1980

|                                   |   |           |
|-----------------------------------|---|-----------|
| PULTE HOME CORPORATION, ILLINOIS  | ) |           |
| DIVISION,                         | ) |           |
|                                   | ) |           |
| Petitioner,                       | ) |           |
|                                   | ) |           |
| v.                                | ) | PCB 80-50 |
|                                   | ) |           |
| ILLINOIS ENVIRONMENTAL PROTECTION | ) |           |
| AGENCY,                           | ) |           |
|                                   | ) |           |
| Respondent.                       | ) |           |

ORDER OF THE BOARD (by Mr. Goodman):

The Agency's April 23, 1980 Motion to Dismiss is granted.

Although Special Condition 1 to Petitioner's October 12, 1979 construction permit purports to allow Petitioner no remedy against the Agency should a later permit to operate the sewer extension not be forthcoming, this is not dispositive of the motion.

The facts alleged are that Petitioner knew four months before applying for a construction [only] permit that the treatment plant it intended to utilize upon connection was then on restricted status. "Restricted status" is so defined in Rule 604(b) of the Board's Water Pollution Regulations as to put Petitioner on notice that no connection permit may issue to it without subjecting it and others to liability for causing or contributing to violations of the Illinois Environmental Protection Act (Act) or Board regulations.

The relief requested in Petitioner's petition is for variance from the Agency's determination of the restricted status of the Marionbrook Sewage Treatment Plant (in order to allow the Agency's acceptance of an operating permit application to connect to this plant). This motion, however, raises the issue of whether the Board can find as a matter of law that Petitioner is entitled to relief.

The Agency's determinations of various statuses of sewage and sewage treatment systems are not made without a considerable amount of experience and expertise. The Agency is not to be overturned in the valid exercise of its powers delegated pursuant to Section 13(a) by Rule 604. No facts were pleaded alleging that the Agency's determination was wrongful. The Board, therefore, dismisses the petition.

The Board agrees with the Agency that the proper remedy is appeal of the denied permit. However, this petition does not allege facts sufficient to raise the issue of wrongful denial of the operating permit. Neither the fact that Petitioner relied on statements of opinion of the Agency and others nor the fact that Petitioner may have been "an innocent victim of fraudulent activity by third parties, miscalculations, or other factors beyond its knowledge or control" is sufficient to plead a prima facie case of a wrongful permit denial.

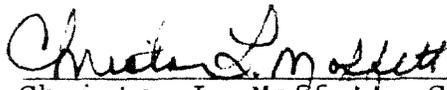
Furthermore, if the Board were to entertain one petition praying for the right to connect to a system found by the Agency to be so burdened that additions to it could cause violations of the Act, it would have to entertain all petitions praying for that relief. This would put the Board in the position of administering the permit system as it pertains to these matters, a concept clearly not contemplated by the Legislature in Section 39 of the Act.

ORDER

It is the Order of the Illinois Pollution Control Board that the petition for variance be dismissed with prejudice.

Mr. Nels E. Werner abstains.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 15<sup>th</sup> day of May, 1980 by a vote of 4-0.

  
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Christan L. Moffett, Clerk  
Illinois Pollution Control Board