

ILLINOIS POLLUTION CONTROL BOARD
February 5, 1981

CITY OF ABINGDON,)
KNOX COUNTY HOUSING AUTHORITY,)
)
Petitioners,)
)
v.) PCB 80-163
)
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,)
)
Respondent.)

DAVID R. MCDONALD, LUCAS, BROWN & MCDONALD, APPEARED ON BEHALF
OF PETITIONER CITY OF ABINGDON,

MARY JO MURRAY, ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF
OF RESPONDENT.

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

This matter comes before the Board on the petition for variance filed September 9, 1980 by the City of Abingdon (City) and Knox County Housing Authority (KCHA). Variance is requested from Rules 951(a) and 952(a) of Chapter 3: Water Pollution, in order to allow the Illinois Environmental Protection Agency (Agency) to issue sewer construction and operation permits. The sewage treatment plant which is owned and operated by the City is currently on restricted status. Unless variance is granted and additional connections to this plant are allowed, the KCHA will be unable to proceed with construction of a planned 50 unit housing development designed to serve low income elderly persons. The development is to be financed with a \$2,811,463 grant from the U.S. Department of Housing and Urban Development (HUD). This matter is being given expedited consideration in light of the deadlines conditioning the HUD grant.

On October 14, 1980 the Agency filed its Recommendation that variance be denied due in part to the hydraulic and organic overloading to the plant, the poor condition of the City's sewer system, and the City's history of bad operations of the plant, which is the subject of an enforcement action currently pending before the Board (IEPA v. City of Abingdon, PCB 80-105, filed May 13, 1980). Petitioners filed their Response to this Recommendation October 27, 1980, and requested that a hearing be held on the petition. The requested hearing was held on December 16,

1980, and was attended by approximately 30 members of the public, three of whom made comment.*

The City of Abingdon, population 4,153, is located in Knox County. The City's sewage treatment plant (STP) was placed on restricted status on January 25, 1977 (Rec. ¶2). The City has since 1972 sought authorization from its citizens to issue bonds for the upgrading of its STP sanitary and storm sewer systems. Bond issues in 1972 and 1976 financed some sewer work, but bond issuance has not been authorized for STP work. However, the City has been certified by the Agency to participate in the USEPA construction grant program; in August, 1980 the City was awarded a Step 2 design grant for sewer rehabilitation. The current tentative timetable calls for completion of sewer work by November, 1982, and then submission of a plan and Step 2 application for STP upgrading in August, 1985 (Rec. 6). No projection has been made to the Board as to when the plant rehabilitation may be complete. Although the Board notes that parties made various comments on the merits of the pending enforcement action against the City, these comments must be disregarded for the purposes of this variance action.

The restricted status problem notwithstanding, in 1977 or 1978 the City began planning for the housing development at issue in conjunction with the KCHA, the latter having applied for and received the HUD program reservation of \$2,811,463 (R. 15-17). The evidence presented tends to indicate that the City's alleged hardship, standing alone, would not justify grant of variance, despite the City's introduction at hearing of evidence which would tend to prove its reliance on Agency actions and failures to act (R. 35-41, 47) as to removing the restricted status impediment to new connections. On the other hand, the allegations and proofs of the KCHA, which has not contributed to the pollution problems pinpointed by the Agency, are compelling.

The Board has often, but most recently (in St. Clair County Housing Authority, et al. v. IEPA, PCB 80-83, August 7, 1980; C. Iber and Sons, Inc., et al. v. IEPA, PCB 80-82, July 24, 1980) recognized the pressing need for low cost housing for the elderly. KCHA, in the person of its Executive Director, Alice Egan, alleged that HUD does not reserve construction funds unless it is satisfied that a need for such housing exists in a specific area, and further alleged that construction funds for housing for the elderly are in short supply. The Board, considering the experience KCHA has gained in similar projects in Galesburg, and accepts KCHA's estimation that the additional loading to the City's plant if the requested hook-ons are allowed would be 55.34 gallons per day per

*At the close of hearing, the City indicated its intention to move the Board in writing to accept an additional exhibit (R. 126). The Board has not received this Motion, although an Agency Response was received December 30, 1980. The Motion if any, is therefore denied.

person if no water saving devices are used (R. 15-30). In estimating total additional load from the proposed development to the City's self-admittedly overloaded plant, of the various figures suggested the Board believes that the 3,575 gpd load is the most credible (65 persons X 55 gpd). This amounts to an increase of four tenths of one percent of the current loading (R. 120).

The additional loading would of course affect not only the STP, but the City's sewer system. The system is again admittedly in poor condition, and surcharging has been complained of in some areas (e.g. R. 56-60, Resp. Ex. 5-7). However, the evidence as a whole suggests that the "Pearl Street" sewer to which the development would be tributary, is not subject to surcharging (R. 72-77, but see R. 108).

The Board is certainly aware that any additional load to an STP and sewer system will have an environmental impact, particularly in wet weather periods. However, the Board finds that, balancing the need for low cost housing for the elderly, the scarcity of construction funds, and to a lesser degree, the economic benefit to the City as a whole, against the additional environmental effects and the City's slowness in correcting its current pollution problems, denial of variance would impose an arbitrary or unreasonable hardship. However, this is a case where the balance of equities requires imposition of conditions, and the commitment of the City and KCHA to take actions, outlined below to minimize the 50 unit development's additional loading to the City's STP and sewer system, as well as the commitment of the City to upgrade its systems and their operation and maintenance. Under these conditions, variance is granted from Rule 962(a) of Chapter 3: Water Pollution; variance from Rules 951(a) and 952(a) is denied as unnecessary.

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

ORDER

Petitioners, City of Abingdon and Knox County Housing Authority, are hereby granted variance from Rule 962(a) of Chapter 3: Water Pollution to allow issuance of sewer construction and operation permits for a 50 unit housing development for the elderly, subject to the following conditions:

1. Water conserving water closets, faucets and shower heads are to be installed in each unit as it is constructed. The Knox County Housing Authority (KCHA) and the Agency shall develop a schedule for a reasonable number of inspection tours of the building by Agency personnel who are to verify that water conservation devices have been installed prior to occupancy of the building.

2. A pump, if necessary, and a holding tank with a capacity sufficient to store the discharge from all 50 units for at least 3 days shall be installed and properly maintained by KCHA. In consultation with the Agency and the City, KCHA shall develop an operation schedule for discharges from the tank to the sewer system. This schedule shall be designed to minimize the loading to the system, especially under wet weather conditions. This schedule shall be followed until such time as sewer rehabilitation work done pursuant to grant funding is completed.

3. Within 45 days of the date of this Order, representatives of the City shall submit to the Agency a plan for maintenance and cleaning of the Pearl Street sewer designed to minimize sewer surcharge, particularly in wet weather.

4. The City shall expeditiously complete sewer rehabilitation work, and shall expeditiously pursue funding for rehabilitation of its sewage treatment plant. In the interim, the existing sewer system shall be operated and maintained so as to minimize sewer surcharge events, and the plant shall be operated and maintained so as to minimize bypassing and to produce the best practicable quality effluent.

5. Within forty-five days of the date of this Order, each Petitioner shall execute and forward to the Illinois Environmental Protection Agency, Enforcement Programs (Water Pollution), 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 certificate shall be as follows:

CERTIFICATE

I, (We), _____, having read the Order of the Illinois Pollution Control Board in PCB 80-163, dated _____, understand and accept the said Order, realizing that such acceptance renders all terms and conditions thereto binding and enforceable.

Petitioner

By: Authorized Agent

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 5th day of February, 1981 by a vote of 5-0.

Christan L. Moffett
Christan L. Moffett, Clerk
Illinois Pollution Control Board