

ILLINOIS POLLUTION CONTROL BOARD  
May 29, 1980

NADELHOFFER-WILSON AND ASSOCIATES )  
(OAK HILL ESTATES), )  
 )  
Petitioner, )  
 )  
v. ) PCB 80-9  
 )  
ILLINOIS ENVIRONMENTAL PROTECTION )  
AGENCY, )  
 )  
Respondent. )

PAUL M. MITCHELL APPEARED ON BEHALF OF PETITIONER.

JUDITH GOODIE, ASSISTANT ATTORNEY GENERAL, APPEARED ON  
BEHALF OF RESPONDENT.

OPINION OF THE BOARD (by I. Goodman):

This Opinion is in support of the Board Order herein of  
May 15, 1980.

Nadelhoffer-Wilson and Associates (Nadelhoffer) filed a  
petition for variance from Rule 962(a) of Chapter 3: Water  
Pollution Control Rules and Regulations (Water Rules) on  
February 8, 1980. Hearings were held in this matter on  
April 9 and 10, 1980. The Board has received no public comments  
in this matter.

In August of 1978 Nadelhoffer entered into a contract to  
acquire certain real estate known as Oak Hill Estates (Oak Hill)  
which is the subject of this proceeding. Nadelhoffer was to  
subdivide the subject property into thirteen lots and fully  
improve the lots with sewer, water and roads. Three of these  
lots, including one containing a residence, were to be retained  
by the original owners. The contract called for Nadelhoffer to  
pay \$1,000 should the contract not be fully executed. After  
incurring expenses totaling somewhere between \$8,000 and \$10,000,  
Nadelhoffer, along with the Village of Woodridge, on June 20,  
1979 filed with the Illinois Environmental Protection Agency  
(Agency) connection permit applications, at which time it was  
informed that the Lisle-Woodridge sanitary treatment plant  
had been placed on restricted status by the Agency. Subsequent  
to the time of notification of the unavailability of the  
connection permits, Nadelhoffer entered into an amended

contract which states, in relevant part, that if the connection permits cannot be obtained by July 31, 1980, Nadelhoffer will forfeit \$20,000 of the \$60,000 purchase price and will have no further interest in the property.

Nadelhoffer alleges that the loss of time and money incurred by it with relation to the property is an arbitrary and unreasonable hardship and therefore requests variance to allow both construction of a sewer system to serve all thirteen lots and connection of Lots 3, 4, and 5, which were retained by the original owner. The variance would also allow Nadelhoffer to execute its duties under the contract so as to avoid nonperformance penalties contained therein.

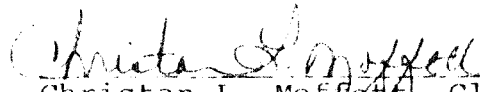
The Agency recommends denial of the petition. At the two-day hearing the Agency presented overwhelming evidence that the Lisle-Woodridge Plant fully deserves its restricted status. It is the Agency's position that no one be allowed to hook up to the Plant, particularly if one's hardship is of a minor nature and is largely self-imposed. The Agency places Nadelhoffer in this classification since it stands to lose \$1,000 and preparation costs which might well have been lost had the project been found to be without merit. The Agency feels that the potential additional loss of \$20,000 is self-imposed since Nadelhoffer entered into that agreement subsequently to its knowledge that no connection permits would be forthcoming.

There is little question that the plant has been correctly placed on restricted status by the Agency. The issue before the Board is whether Nadelhoffer will sustain an arbitrary and unreasonable hardship should the Board fail to grant its petition, thus allowing three more connections to be permitted. With regard to Nadelhoffer's financial hardship, the Board agrees with the Agency that the potential loss of \$20,000 was a risk assumed by Nadelhoffer with knowledge of the likelihood that it would be denied a permit to hook up to the plant. The Board finds, however, that Nadelhoffer had expended somewhere between \$8,000 and \$10,000 prior to the time that it knew or reasonably could have known about the impending restricted status. Another factor which the Board must consider in this case is the abrupt manner in which the plant was placed on restricted status. Although the Board disagrees with Nadelhoffer's allegation that the rules envision a situation where a plant must be put on critical review prior to its placement on a restricted status list, nevertheless, direct placement of a plant on a restricted status list without prior warning of critical review must be considered to be unusual. It is this unusual procedure by the Agency, along with the legitimate hardship imposed upon Nadelhoffer, that convinces the Board that grant of variance is indicated in this particular case. Another factor is that Nadelhoffer has offered to transfer three existing permits from two other subdivisions which it owns, Summer Hill Estates subdivision and Mending Wall

subdivision, to the three lots in Oak Hill. This would, technically, impose no additional potential load on the plant and therefore cause no degradation of the environment. The Board therefore grants Nadelhoffer variance from Rule 962(a) of Chapter 3 of the Board's Water Rules to allow construction of a sanitary sewer extension to thirteen proposed home sites at Oak Hill and to allow connection only to Lots 3, 4, and 5 of the subdivision under certain conditions.

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

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion was adopted on the 29<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