

ILLINOIS POLLUTION CONTROL BOARD
October 13, 1977

COOK CONSTRUCTION COMPANY,)
)
 Petitioner,)
)
 v.) PCB 77-97
)
 ENVIRONMENTAL PROTECTION AGENCY,)
)
 Respondent.)

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

On March 29, 1977, the Cook Construction Company (Cook) filed a Petition for Variance from Rules 951 and 952 of the Pollution Control Board Water Rules and Regulations: Chapter 3 (Regulations). The Environmental Protection Agency (Agency) filed its Recommendation on May 5, 1977, in favor of the variance. Thereafter, the Agency submitted a Motion for Leave to Amend Recommendation to grant the variance with conditions. The Petitioner filed a Motion to Grant Variance Without a Hearing and a Limited Waiver of Decision Period through October 31, 1977. On September 1, 1977, the Board granted the Agency's and the Petitioner's Motions.

Cook Construction Company (Cook), a partnership doing business in Carterville, Illinois, seeks this variance for four newly-constructed homes which are presently occupied and connected to the Carterville sewage treatment plant (STP). The City of Carterville (City) was placed on restricted status by the Sanitary Water Board on August 19, 1964 (Rec. 3, p2).

The STP in Carterville was designed to handle 0.3 MGD (3000 P.E.) and is subject to organic overload (125% of design). According to the NPDES Permit issued to Carterville, the STP is required to meet 30 mg/l BOD and 40 mg/l suspended solids (TSS) effluent concentration levels. The schedule for compliance is contingent upon the City obtaining grant funds. At present, Carterville has been certified for a Step I grant but has not been awarded the grant money. The STP has not been submitting discharge monitoring reports as required by the NPDES Permit, but the Agency records indicate that Carterville has consistently

exceeded the 30/40 BOD/TSS limits and its discharge violates downstream water quality standards (Rec. 4, p2). Carterville has also continued to issue sewer connection permits notwithstanding the restricted status (Pet. 15, p5).

In 1976 the Petitioner constructed four homes on a recently-subdivided parcel and connected four-inch sewer lines from each house to a common six-inch sewer extension containing 90° turns without manholes. According to the Agency, the sewer line violates the minimum criteria of the "Ten States Standards" which designates a minimum eight-inch diameter for sewer lines and requires that manholes be placed at 90° turns in the line (Rec. 2, pl-2).

The Petitioner has claimed that he was unaware of the permit requirements and the standards at the time the houses and the sewer line were constructed. The record shows that the Petitioner did not receive formal notice of the permit and construction violations until after construction on the houses had begun and the sewer line was in the ground (Pet. Exh. C, Rec. Exh. A).

The Agency's Amended Recommendation advises the Board to grant the variance provided that manholes are installed at 90° structures (Am. Rec. 6, pl-2).

The Board recognizes that the Petitioner was not notified of the requirements and the standards before construction commenced. However, formal notice is no condition of the Act or its Regulations and will not alone justify the grant of a shield from enforcement proceedings.

Section 35 of the Environmental Protection Act (Act) stipulates that a variance will not be granted unless the petitioner shows that compliance with the Regulations would impose an arbitrary and unreasonable hardship. In this case, the Petitioner claims that loss of access to the sanitary sewer facilities would dispossess the present occupants of their homes without alternative housing available to them in the community. The Petitioner has investigated the alternative possibility of installing private disposal systems and has found that it is physically impractical and economically unreasonable (Pet. 18, p6).

In other cases the Board has stated that prior construction in and of itself is not a sufficient hardship to cause the Board to grant a variance. Jurgens, PCB 75-195, 18 PCB 635. If the Petitioner's hardship were the only issue in this matter, his hardship would be deemed self-imposed and the variance would be denied. However, the Board cannot ignore the other repercussions which would result from a variance denial.

The Board agrees that the owners of the four homes would suffer unreasonable hardship if they were not allowed continuing service from the Carterville STP. It further recognizes that the alternatives under investigation are not only unreasonable for small parcels, but it could create health hazards. Therefore, the Board will grant the variance subject to the aforementioned conditions.

The Board is, however, greatly disturbed by the poor performance of the Carterville sewage treatment plant. The record shows an apparent disregard for the Act, the Board Rules, and for the requirements of its permit. The Board expects that those charged with operations and maintenance will monitor its discharges, report them, and to operate its treatment works in accordance with the permit requirements.

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

ORDER

The Petitioner, Cook Construction Company, will be granted a variance from Rules 951 and 952 for Petitioner's sewer extension subject to the following conditions:

1. Petitioner shall submit to the Agency an acceptable set of plans and specifications prepared by a registered professional engineer for the sanitary sewer in question so that the Agency may issue the appropriate permits.
2. Petitioner will install manholes within 90 days of the issuance of an Agency permit for the existing six-inch pipe where that pipe makes 90° turns if the Agency determines that manholes are necessary.
3. The Agency will issue all necessary permits upon proper application without requiring the installation of eight-inch pipe in place of the existing six-inch pipe provided, however, that the permit application is otherwise correct and complete.
4. This variance is limited to four existing connections; no further connections to the existing six-inch line will be allowed.
5. Within 35 days of the date of this Order, the Petitioner shall submit to the Manager, Variance Section, Division of Water Pollution Control, Illinois Environmental Protection Agency, 2200 Churchill Road, Springfield, Illinois, 62706, an executed Certification of Acceptance and agreement to be bound to all terms and conditions of the variance. The form of said certification shall be as follows:

CERTIFICATION

I, (We), _____ having read
the Order of the Pollution Control Board in PCB 77-97,
understand and accept said Order, realizing that such
acceptance renders all terms and conditions thereto
binding and enforceable.


SIGNED

TITLE

DATE

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 13th day of October, 1977 by a
vote of 5-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board