

Water is currently provided to the FBM property by two wells located on it, (R. 9). Sanitary service for the industrial building is provided by its own 0.005 MGD "package" sewage treatment plant, and the seven residences are served by individual septic fields, (R. 11).

FBM now wishes to replace the existing water and sanitary facilities for its property with service from the Park Forest South Utilities Company. To this end, FBM has obtained permission and a Certificate of Public Convenience and Necessity from both the Agency and the Illinois Commerce Commission with regard to the installation of water service, (R. 8), and has obtained the necessary Certificate of Public Convenience and Necessity from the Illinois Commerce Commission with regard to the installation of sanitary service. FBM has incurred assorted legal, engineering and other expenses with regard to those proceedings, and has paid a \$19,000 tap-on fee to the Park Forest South Utilities Company, (R. 15).

FBM first applied to the Agency for a sewer connection permit for the industrial plant and seven residences on its property on April 28, 1976, (Rec., 2). On May 12, 1976, the Agency denied that permit application. An additional permit application was submitted to the Agency by letter dated May 24, 1976, and was denied by the Agency by letter of June 10, 1976, (R. 56). The Agency cited as its reasons for denial the problems of bypassing and effluent quality at the Park Forest South Utilities Company's sewage treatment plant.

PERMIT APPEAL

FBM's Permit Appeal may be disposed of summarily. FBM bases its Permit Appeal on several grounds, but these grounds are generally duplicative of one another; the essence of FBM's appeal is that the Agency failed to properly consider hardship or economic factors in its permit determination, and that the Agency failed to adequately weigh such hardship against the relatively small (88 PE) additional load which would be placed on the Park Forest South Utilities Company sewage treatment plant.

Those contentions do not state a cause of action as a Permit Appeal. The Agency's standards for permit issuance, contained in Rule 962 of Chapter 3, are quite specific and include none of the points urged by Petitioner. The factors cited by FBM are properly brought before this Board in a Variance proceeding.

The bulk of the Agency's testimony and evidence in this case (R. 69-112) proves unquestionably that there were indeed both effluent quality and bypass problems at the Park Forest South Utilities Company. Although such a showing was not required of the Agency -- indeed, a contrary showing was Petitioner's burden -- the Agency's presentation shows that its decision to deny FBM's permit application was unquestionably correct under Rule 962 of Chapter 3.

Petitioner's contention that the Park Forest South Utilities Company's violations are caused by a single, unpermitted discharge into the sewer system tributary to the plant is not well taken under the Permit Appeal. The simple fact of violation, regardless of cause, is all that is required for the Agency's determination under Rule 962. This contention is, however, properly treated as a Variance consideration, below.

Finally, with regard to the Permit Appeal, Petitioner's contention that no construction or operating permits are required for a sanitary sewer designed to serve seven individual residences is plainly erroneous.

VARIANCE

FBM's initial error with regard to its Variance Petition involves the relief sought. In situations of this type, relief from the various sections of the Act and Board Regulations cited in FBM's petition is inappropriate. Instead, the proper relief is a Variance from the applicable sections of Rule 962, which in this instance properly prohibited the Agency's issuance of FBM's permit. We shall, therefore, analyze the FBM case as though the proper relief had been sought.

FBM presented testimony on the following points in support of its Variance Petition:

1. The cause for the Agency's imposition of Restricted Status on the Park Forest South Utilities Company's sewage treatment plant is influent to that plant from a single source: the Inolex Corp.'s pharmaceutical plant, which contributes 5 to 6 percent of the sewage treatment plant's hydraulic flow, but also contributes between 85 and 100 percent of the plant's BOD and suspended solids treatment capacity, (Dep. 9, 10).

2. Of the Park Forest South Utilities Company sewage treatment plant's capacity of 22,000 PE, the proposed connection to the FBM property would add approximately 0.4 percent (88 PE), (R., 48).

3. FBM's present lessee of the industrial plant on the subject property, The American Lock Company, may cancel its lease if FBM does not provide water and sanitary service from the Park Forest South Utilities Company.

4. The present water system serving the FBM property is antiquated, subject to constant breakdowns, and quite expensive to maintain.

5. The present septic systems serving the seven residences on the FBM property are not fully effective, and need constant maintenance and repair. Despite constant repair efforts in the past, problems with the system have caused water pollution and air pollution (odor) problems.

6. The small sewage treatment plant presently serving The American Lock Company plant is expensive to maintain and, although it may be capable of obtaining a Pfeiffer exemption from the applicable standards in Rule 404, its capacity to meet Board standards is nonetheless marginal.

7. The Board has a policy of approving the replacement of small, limited capacity sewage treatment plants which discharge to waters of the State with service provided by larger, centralized sewage treatment.

8. The installation of water service is necessary at the present time; the separate installation of water and sanitary service to the FBM property would not be economical. Construction of both water and sanitary service connections should take place at the same time.

9. FBM has already invested a considerable amount in engineering fees, legal fees, and other costs associated with designing the necessary facilities, and obtaining the necessary permission from the Agency.

In opposition to the Variance grant, the Agency argues that Petitioner has failed to show the requisite hardship. In light of the Agency's testimony and exhibits as to the results of past problems at the Park Forest South Utilities Company's sewage treatment plant, we would normally tend to agree that the balance of possible environmental harm against hardship to the Petitioner would favor the denial of this Variance.

However, FBM presented evidence at hearing on two additional points which lead us to the conclusion that the Variance should be granted.

First, FBM presented evidence showing that the Park Forest South Utilities Company's sewage treatment plant has adequate hydraulic capacity for both the present load and any additional load to be provided by FBM's property. Prior problems at the plant, including bypassing, have been the result of extremely high surge loadings from the Inolex plant, running as high as 20,000 mg/l of BOD, with accompanying high suspended solids loadings. These loadings have caused clogging of tertiary filters at the sewage treatment plant, leading to bypassing. At the direction of the Park Forest South Utilities Company, Inolex has recently completed the second stage of what may be a three or four stage program to improve its pre-treatment, and decrease surge loadings and overloadings on the Park Forest South sewage treatment plant. Recent results at the Park Forest South sewage treatment plant indicate that progress has already been made.

Secondly, FBM has offered at hearing to continue operation of the small treatment plant presently serving The American Lock Company plant (covering 60 PE of the proposed additional 88 PE), so that discharges to the Park Forest South Utilities Company sewage treatment plant will be accordingly pre-treated. Under this situation, the FBM addition to the sewage treatment plant would be 0.5 pounds per day of BOD, or 0.02 percent of the present load, (R. 51). FBM would contribute 0.6 pounds per day of suspended solids, or approximately 0.015 percent of the present load, (id.).

Under these facts, any environmental damage resulting from the grant of the requested Variance would be negligible. Weighing such negligible harm against the hardship shown by FBM, we find that there are sufficient facts in the instant case to justify the Variance grant.

We shall require continued operation of the present, small treatment plant on the FBM property as a condition to the Variance grant. That condition shall be released only when the Agency has determined that the Park Forest South sewage treatment plant has adequate hydraulic and biological capacity.

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

ORDER

IT IS THE ORDER OF THE POLLUTION CONTROL BOARD that:

1. The Permit Appeal Petition in this matter be dismissed with prejudice;
2. Petitioner FBM Company, Inc., be granted a Variance from Rule 962(a) of Chapter 3: Water Pollution, of this Board's Rules and Regulations, to allow the issuance of permits by the Environmental Protection Agency for the construction and operation of sanitary sewer facilities serving The American Lock Company factory and seven individual residences on Petitioner's property adjacent to Park Forest South, Will County, Illinois;
3. The foregoing Variance grant is conditioned upon continued operation of the existing sewage treatment plant serving The American Lock Company manufacturing facility on said property, to provide pre-treatment for all discharges from that manufacturing facility; said condition to be released by and upon determination of the Environmental Protection Agency that the Park Forest South Utilities Company sewage treatment plant's present bypassing and effluent problems have been corrected;
4. Variance from Sections 12(a), (b) and (c) of the Environmental Protection Act and Rule 951(a) of Chapter 3: Water Pollution, is denied; and,
5. Petitioner FBM Company, Inc., shall, within thirty (30) days of the date of this Order, execute and forward to the Environmental Protection Agency, Control Program Coordinator, 2200 Churchill Road, Springfield, Illinois, 62706, a Certificate of Acceptance in the following form:

I, (We), _____ having read the Order of the Illinois Pollution Control Board in case No. PCB 76-171, understand and accept said Order, realizing that such acceptance renders all terms and conditions thereto binding and enforceable.

SIGNED

TITLE

DATE

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 28th day of October 1976, by a vote of 5-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board