

ILLINOIS POLLUTION CONTROL BOARD
July 24, 1980

C. IBER & SONS, INC., THE)
WARREN COUNTY HOUSING AUTHORITY,)
and THE CITY OF MONMOUTH)
)
Petitioners,)
)
v.) PCB 80-82
)
ENVIRONMENTAL PROTECTION AGENCY,)
)
Respondent.)

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

This matter comes before the Board on a petition for variance from Rule 962(a) of Chapter 3: Water Pollution (Chapter 3). The petition of C. Iber and Sons, Inc. (Iber) and the Warren County Housing Authority (WCHA) was filed April 18, 1980. Pursuant to the Board's Order of May 1, 1980, the City of Monmouth (Monmouth) joined in this petition by a filing dated June 2, 1980. The original Recommendation of the Environmental Protection Agency (Agency) was filed June 12, 1980 and opposed this variance. However, the Agency's First Amended Recommendation, filed July 9, 1980 supports grant of the variance with conditions. The public has filed no objections to this petition. Hearing was waived, and none has been held.

The WCHA currently owns and operates a 120 unit low rent housing project for the elderly. Since 1978, WCHA has been engaged in the development of an additional fifty units to serve this segment of its community. This project, which is being funded by the U.S. Department of Housing and Urban Development (HUD), was designed to discharge ordinary domestic sewage through a sewer extension to the sewage treatment plant (STP) owned and operated by Monmouth. Pursuant to HUD requirements, on August 7, 1978 the WCHA entered into a "Co-operation Agreement" with Monmouth which contained provisions for Monmouth to furnish services. By letter of December 18, 1978 Monmouth further assured the WCHA of the availability of adequate public facilities to serve the project. (Pet. 2) Iber is the general contractor engaged by WCHA to construct this housing project.

Variance relief is requested here because the Monmouth STP is currently on restricted status, with the result that new sewer construction and connection is banned pursuant to Rule 962(a) of Chapter 3.

The Monmouth STP had been placed on the Agency's "critical review" list on July 11, 1976. Also, on April 6, 1979 the Agency filed a complaint with the Board against the City of Monmouth citing effluent and water quality violations. The parties' proposed stipulated settlement of this still pending action, PCB 79-79, has been specifically incorporated by reference into this proceeding.* It states that Monmouth's design average capacity is 1.5 mgd. Flows in excess of 1.5 mgd are bypassed at any or all of four bypass structures. (The Agency's Amended Recommendation however, states that Monmouth's design maximum capacity is 2.5 mgd at p. 5.) In dry weather, Monmouth allegedly has caused approximately 1 mgd of sewage to bypass part or all of its treatment processes and to be discharged into Markham Creek. Even greater flows are bypassed in wet weather (PCB 79-79, Stip. 3-4).

On September 27, 1979 WCHA and Iber entered into a turnkey contract requiring Iber to complete construction of the project by September 26, 1980. On October 5, 1979 pursuant to the contract, Iber acquired the site by warranty deed from the WCHA. Layout work was begun on October 9, 1979 and excavation was commenced on October 16, 1979 (Pet. 7).

As of September 30, 1979, the Monmouth STP was still formally listed by the Agency as having critical review status and a remaining capacity of 217 P.E. However, on October 10 the Agency notified Monmouth that restricted status proceedings were pending, and on October 23, 1979 Monmouth was placed on restricted status. Petitioners Iber and the WCHA alleged that they were not informed of Monmouth's restricted status until December 4 during the course of a meeting with Monmouth concerning a storm sewer connection. They further allege that it was not until December 11, 1979 that Iber and the WCHA were made aware of the need to obtain a permit for the sanitary sewer line construction and connections. By that time, Iber had expended some \$200,000 in project costs, and had issued purchase orders totalling some \$472,000 (Pet. 11, 8-9, Rec. 2).

The Board finds petitioner's plea of lack of awareness concerning the need to obtain a permit unacceptable. However, it is understandable that Iber and WCHA relied on the Agency's critical review list and Monmouth's estimates of its remaining capacity at the time of the September 27, 1979 contract. Nevertheless, these are not the most important issues here.

There is a demonstrated community need for additional low-rent housing for the elderly in Monmouth, as evidenced by the fact that WCHA has 87 applications for the 50 units involved here, and anticipates receiving more as the project nears completion. Al-

*The Board has not considered the merits of this settlement. This reference to it is not to be construed as indication of approval of the proposed settlement.

ternative treatment is not feasible, as HUD will accept only connection to City sewer facilities. Iber, as well as the community, especially its elderly, contemplate financial hardship if this variance is denied.

The Agency's original negative Recommendation was based on 1) petitioners' original estimate that its project would discharge an additional 31 P.E. into Monmouth's system, 2) Monmouth's continued hydraulic overloading, 3) the resulting poor water quality of Markham Creek, and 4) the fact this Board has recently granted variances allowing 3 additional connections to the Monmouth STP in City of Monmouth v. EPA, PCB 79-36, 33 PCB 467, (May 10, 1979) (0 to 62.5 P.E.), City of Monmouth v. EPA, PCB 79-261 (March 6, 1980)(12.5 P.E.), H.J. Bergman Builders v. EPA, PCB 79-264 (April 17, 1980)(72 P.E.).

In response to this Recommendation, petitioners expended \$2500 for a water conservation report and analysis. This study explains that if identified conservation devices are installed in the WCHA's existing 120 unit building, and in the 50 unit Iber construction, that the combined water consumption and sewage flow from these 170 units can be reduced below the current levels of the existing 120 units. It is not clear what additional costs will be caused by installation of necessary equipment in the 50 unit building under construction, but petitioners' engineering consultant estimates that costs to rework the existing 120 unit building will be approximately \$8,000 (Response, Exhibit A). The Agency has verified the accuracy of these findings, and the practicability of the conservation plans (1st Am. Rec. 5-7).

The Board finds that grant of variance with conditions is particularly appropriate here. Although Monmouth has received funding for the upgrading of its plant, work is not anticipated to be completed until October, 1981. Petitioners have proven that they can reduce their discharge to this overburdened plant. In light of this, and of the additional recognized need for low-income housing for the elderly, possible loss of federal funding for the project, and WCHA and Iber's stated reliance on the Agency's critical review lists and Monmouth's representations, it would be both arbitrary and unreasonable to deny this petition. Variance from Rule 962(a) of Chapter 3 is therefore granted, subject to the conditions outlined relating to the implementation of water conservation measures.

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

ORDER

Petitioners C. Iber & Sons, Inc., the Warren County Housing Authority, and the City of Monmouth are hereby granted variance from Rule 962(a) of Chapter 3: Water Pollution, subject to the following conditions:

1. Within 90 days of the date of this Order, Petitioners shall install a) plastic dams in the water closets of the existing 120 unit building, b) water saving closets in the 50 unit building, and c) water saving faucets and shower heads in each building.

2. The Warren County Housing Authority (WCHA) and the Environmental Protection Agency shall develop a schedule for a reasonable number of inspection tours of the two buildings by Agency personnel who are to monitor the installation of the water conservation devices. WCHA personnel shall accompany Agency personnel during these inspections, which shall include random inspection of units in each building. All reasonable measures shall be taken to minimize inconvenience to the elderly residents of these units.

3. Within 45 days of the date of this Order, the Petitioners shall execute and forward to the Illinois Environmental Protection Agency, Variance Unit, 2200 Churchill Road, Springfield, IL 62706, an executed Certification of Acceptance and Agreement to be bound by all conditions of the variance. This forty-five day period shall be stayed if Petitioners seek judicial review of this variance pursuant to Section 41 of the Environmental Protection Act. The form of said certification shall be as follows:

CERTIFICATION

I, (We,) _____, having read the Order of the Illinois Pollution Control Board in PCB 80-82, dated _____, understand and accept the Order and agree to be bound by all of its terms and conditions.

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 24th day of July, 1980, by a vote of 5-0.

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