

ILLINOIS POLLUTION CONTROL BOARD
January 22, 1981

COUNTY OF DuPAGE,)
)
) Petitioner,)
)
) v.) PCB 80-160
)
 ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,)
)
) Respondent.)

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

This matter comes before the Board on the petition for variance filed by the County of DuPage (County) September 9, 1980 as amended October 31, 1980. The County seeks variance from Rule 962(a) of Chapter 3: Water Pollution. It desires to obtain an operating permit for a sanitary sewer extension to serve 52 homes in a subdivision known as Timberlake Estates, Unit 3, in Clarendon Hills. The already constructed sewer extension, built pursuant to EPA Permit No. 1979-HC-5293 (construct only), would deliver sewage to the County's Marionbrook treatment plant, which has been on restricted status since April 30, 1979.

The Recommendation of the Illinois Environmental Protection Agency (Agency) filed December 17, 1980 was that variance be granted, subject to the provisions of an Order entered in People of the State of Illinois v. County of DuPage, 80MR432, by the Court for the 18th Illinois Judicial Circuit, DuPage County, on December 4, 1980. Hearing on this petition was waived, and none has been held.

The 52 homes in Timberlake Estates, Unit 3 are currently served by individual septic fields. The septic fields are located in the back of each lot; private wells are located in the front of each lot. The lots on which these homes are located are subject to flooding, which in turn has caused a washout of raw sewage from the septic fields in 1970, and 1976-1978. These washouts accordingly produce a localized health hazard. On April 28, 1980 the DuPage County Health Department reported to the Director of Public Works that it had surveyed the septic fields and had found a "substantial number" defective and marginally defective. It recommended that the septic fields "be abandoned" and sewer connections made as soon as possible. Sewer connection to the Marionbrook plant would cost each homeowner about \$2,950, half the estimated cost of upgrading the septic system to correct the problem. The County stated that there is no other alternate facility and no space left for on-site collection and treatment with a small package plant.

The Board has been advised of the severe and continuing problems with the Marionbrook treatment plant in several past variance petitions (e.g. Willowbrook Development Corp. v. EPA, PCB 80-58, July 3, 1980, Corporate West, Inc. et al. v. IEPA, et al., PCB 80-96 to 100 [consolidated], August 7, 1980), and has been made aware of the widespread concern in the DuPage County area concerning the adverse environmental and economic impacts the situation has caused. The filing of a Complaint for Injunction in the above referenced Circuit Court action has been one of the results of that concern. The Court Order, based on a stipulation by the parties, provides in part for the upgrading of the Marionbrook plant by specified dates, and for the phasing in of connections to it for persons who had previously received Agency construct only or construct and operate permits. However, these connections are to be made only as the plant demonstrates, in specified fashion, its ability to treat new flows to limits specified in that Order.

The Board commends the parties to that action for their initiation of expeditious plant rehabilitation. As the parties have also explicitly recognized that Marionbrook cannot currently meet the effluent limitations of its NPDES permit, the Board assumes that they have also recognized that compliance with the effluent limitations of the Court's Order does not constitute compliance with the Act or the Board's rules. The Board, therefore, anticipates that the parties' will shortly initiate appropriate variance or other proceedings before the Board as the plan is implemented, since any permit issued by the Agency without a proper variance would lie void.

The Board finds that denial of variance would impose an arbitrary or unreasonable hardship. Connection of the 52 homes to the sewer extension is the most cost-effective, environmentally sound response to this health hazard, particularly in view of DuPage County's enforceable commitment to upgrade the Marionbrook plant. Variance from Rule 962(a) is granted.

While the Board declines to condition this variance on compliance with the Order entered in 80MR432, the Board assumes that the County will follow the plan in allowing these connections. The Board will give great weight to reports concerning Marionbrook's compliance in any future petitions to remove the restricted status impediment to the Agency's authority to issue operation or construction-operation permits for sewers tributary to the plant, although non-compliance with that Order is of course independently enforceable.

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

ORDER

1. Petitioner, the County of DuPage, is hereby granted variance from Rule 962(a) of Chapter 3: Water Pollution, to permit issuance of an operation permit for the sewer extension

constructed pursuant to EPA Permit No. 1979-HC-5293 to serve 52 homes in the subdivision known as Timberlake Estates, Unit 3 in Clarendon Hills, Illinois.

2. Within forty-five days of the date of this Order, Petitioner shall execute and forward to the Illinois Environmental Protection Agency, Variance Section, 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:

CERTIFICATION

I, (We), _____, having read the Order of the Illinois Pollution Control Board in PCB 80-160, 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 22nd day of January, 1981 by a vote of 4-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board