

ILLINOIS POLLUTION CONTROL BOARD
October 18, 1979

CITY OF LaHARPE,)
)
) Petitioner,)
)
) v.) PCB 79-121
)
) ENVIRONMENTAL PROTECTION AGENCY,)
)
) Respondent.)

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

The City of LaHarpe requests a variance from items listed in a complaint filed with the Board by the Environmental Protection Agency (Agency) against Petitioner (PCB 79-102) on May 2, 1979. The complaint alleges violations of Sections 12(a) and 12(f) of the Environmental Protection Act (Act) and of Rules 410(a), 502(a) [sic], 601(a), 602(b), 901 and 1201 of Chapter 3: Water Pollution Control Rules and Regulations (Chapter 3). The Agency recommends that the variance be denied. Petitioner has waived its right to a hearing.

The City of LaHarpe, located in Hancock County, owns and operates a sewage treatment plant and sewer system that serves approximately 690 customers. Lift station #1 expels overflow sewage through a pipe into a nearby watercourse during wet weather. Excess flow causes the other lift station, located at the treatment plant, to allow sewage to bypass an activated sludge unit and to flow directly into a polishing lagoon. The frequency, duration and magnitude of the overflows are unknown.

Discharge monitoring reports indicate that the Petitioner has been exceeding the effluent limitations of its NPDES permit of 30 mg/l BOD₅ and 30 mg/l suspended solids (SS). Petitioner has failed to monitor the overflows or to install an auxiliary pump at lift station #1. Installation of a total sewage flow meter and an auxiliary pump is presumed to now have been installed (p.5). Petitioner claims that violations of the BOD₅ and SS effluent limitations, overflow at the lift station, and bypassing at the treatment plant can only be eliminated if federal funding for upgrading the treatment plant is obtained.

Petitioner contends that denial of the variance would impose an arbitrary and unreasonable hardship upon it. Petitioner

indicates that the estimated cost of compliance of \$381,880 cannot be borne by 690 customers, and that significantly increased user rates would promote an exodus of residents to nearby towns having lower rates. Revenue bonds issued when the present sewer system was constructed have not been retired; therefore, the city is not in a strong position to obtain local financing for extensive upgrading of its treatment plant. The Petitioner has applied for Step 1 funding in the Municipal Wastewater Treatment Works Construction Grant Program.

The Board, pursuant to Section 35 of the Act, must grant variances consistently with the provisions of the Clean Water Act. Sections 304(b) and 304(d) of the Clean Water Act authorize the Administrator of the U. S. Environmental Protection Agency to set effluent limitations. Effluent from a secondary treatment works may have a maximum average concentration of 30 mg/l BOD₅ and 30 mg/l SS for a 30 consecutive day period. 41 FR 30785, §133.102(a) and (b) (July 26, 1976).

Petitioner's current NPDES permit requires that BOD₅ and SS concentrations each be limited to 30 mg/l. Petitioner's request for a variance from Section 12(f) of the Act and from Rules 401(a) and 901 of Chapter 3 asks that it be allowed to exceed these permit limits. Under Section 301i(1) of the Clean Water Act, Petitioner had until June 26, 1978 to request that these permit limitations be modified by the Agency and to gain an exemption until July 1, 1983 from the effluent regulations. Petitioner failed to make such a request and must be held to the current permit limitations. Granting a variance that would allow discharges beyond the 30 mg/l BOD₅ and 30 mg/l SS limitations would be inconsistent with the Clean Water Act. The Board denies Petitioner a variance from Rules 401(a) and 901 of Chapter 3 and from Section 12(f) of the Act.

Turning to Petitioner's request for a variance from Rules 502 and 602(b) of Chapter 3 the Board notes that the Agency describes Section 502 when referring to Section 502(a). Since Rule 502 has no subsections, the Board presumes that the Agency has made a clerical error and interprets all references to 502(a) as referring to Rule 502.

Rule 502 requires that all effluent be measured. The City has made funds available for the installation of a flow meter at the plant. Completion of this project is scheduled for mid-October, 1979. Without the variance, Petitioner could be subject to a penalty in an enforcement action for a continuing violation of Rule 502. However, upon examination of Exhibits 2-6 to the Agency's recommendation, the Board finds that Petitioner was made aware of the need for the flow measuring device as early as March of 1974 and was reminded no less than five times in the subsequent four-year period of the deficiency. Under these circumstances the Board finds that any hardship imposed by refusing to grant a variance

from the requirements of Rule 502 is a self-imposed one. The Board therefore denies Petitioner a variance from Rule 502 of Chapter 3.

Rule 602(b) prohibits overflows in sanitary sewers. Overflows occur in the City of LaHarpe during wet weather. The overflow problem cannot be rectified until the treatment plant is reconstructed. Federal funding is necessary to finance this project and without the variance requested, the City of LaHarpe would be subject to an enforcement proceeding for the continuing violation of 602(b). On August 10, 1978 the Agency advised Petitioner that Step 1 funding was available from the federal government for the purpose of starting the reconstruction of the treatment plant (Agency Rec., Ex.1). Petitioner did not apply for such funding until June 19, 1979, with the apparent results that Petitioner will not be added to the priority list until 1980 and that it will be at least three to five years beyond that date until Step 2 or Step 3 funds for engineering and construction may become available. Indeed, Petitioner has filed no application for federal aid from 1971 until 1979. In its amendment to the petition for variance filed August 21, 1979 Petitioner states "past City administrations for the Petitioner have not applied for funding available to them through the Agency because of a number of complex political and personal reasons." The Board finds that Petitioner's inaction has been self-serving and constitutes a significantly delayed compliance. The Board therefore denies Petitioner's request for variance from Rule 602(b) of Chapter 3.

The City's variance petition requests relief from all violations alleged in the Agency's complaint in EPA v. LaHarpe, PCB 79-102. Variances from Rules 601(a) and 1201 of Chapter 3, as well as from Section 12(a) of the Act, remain to be considered. Rule 601(a) requires that an auxiliary power source be available at a sewage treatment plant in cases of emergencies or power outages, while Rule 1201 requires that a properly certified operator be employed at the plant. Petitioner indicates that an auxiliary pump was scheduled to be installed by August 1, 1979 (p.5) and that proper certification has been obtained by its plant operator (p.7). From these statements the Board presumes that the City has no need for a variance from these rules; consequently, the petition as it requests relief from Rules 601(a) and 1201 of Chapter 3 is hereby dismissed as moot.

Section 12(a) provides that no person shall cause or threaten the discharge of contaminants that cause or tend to cause water pollution within the State or that violate the regulations and standards of the Board. Because of problems of interpretation, the Board does not favor granting variances from general provisions of the Environmental Protection Act. From our rulings herein, the Board finds that Petitioner is not entitled to any such extraordinary relief and denies variance from Section 12(a) of the Act.

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

ORDER

- 1) The City of LaHarpe's petition for variance from Rules 601(a) and 1201 of Chapter 3: Water Pollution Control Rules and Regulations is hereby dismissed as moot.
- 2) The City of LaHarpe is hereby denied a variance from Rules 410(a), 502, 602(b) and 901 of Chapter 3: Water Pollution Control Rules and Regulations and from Sections 12(a) and 12(f) of the Environmental Protection Act.

IT IS SO ORDERED.

I, Christian L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 18th day of October, 1979 by a vote of 4-0.


Christian L. Moffett, Clerk
Illinois Pollution Control Board