

ILLINOIS POLLUTION CONTROL BOARD

July 25, 1974

CHICKASAW HILLS UTILITY COMPANY, INC.,)
)
 Petitioner,)
)
 v.) PCB 74-59
)
ENVIRONMENTAL PROTECTION AGENCY,)
)
 Respondent.)

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

Chickasaw Hills Utility Company, Inc. owns and operates a sewage treatment plant at North Aurora, Illinois. The plant has a design average flow of 0.1 mgd and at this time the flow which is tributary to the plant is approximately 0.037 mgd. Chlorinated plant effluent is discharged to Long Run Creek. Under Rule 404(f) of the Water Pollution Regulations of Illinois the effluent standards for this facility are 4 mg/l BOD, 5 mg/l suspended solids and 400 fecal coliforms per 100 ml. Grab sampling by the Agency indicates that the plant is operating in violation of Rule 404(f) but EPA field personnel have not observed any adverse environmental impact attributable to Petitioner's effluent. Plant expansion and upgrading is currently underway to achieve compliance with Rule 404(f) by September 1, 1974.

Petitioner requests variance from Rule 404(f) so that sewer lines may be installed to connect to a proposed subdivision known as Pebble Creek. It is stated that the entrepreneurs in Pebble Creek have made a considerable investment and that installation of the sanitary sewer is of paramount importance to them. These entrepreneurs are not parties to this proceeding. The Petitioner utility company alleges that a failure to install the sewer lines will result in a loss of potential customers in the subdivision, and that such loss constitutes an unreasonable hardship for the utility company.

The EPA has informed Petitioner that "the combination of the existing waste load and the anticipated future waste load on the treatment facilities will place the existing treatment units at approximately 70% of their design capacity of 1,000 P.E. In other words the existing facilities have sufficient capacity to provide treatment for approximately another 300 P.E. We will issue permits to construct and operate sanitary sewers to serve only another 300 P.E."

The record does not reveal how much additional load Petitioner wishes to receive through the installation of the new sewer lines. As far as we know the permits to construct and operate sanitary sewers to serve an additional 300 P.E. could very well be adequate. The Agency takes the position that it will be proper to issue such a limited permit even though Petitioner is not in compliance with Rule 404(f), since Petitioner's inability to currently meet the requirements of Rule 404(f) is not due to hydraulic or organic overload. The Agency states that "the connections of sewer extensions and laterals to the system has no effect on the treatment plant's ability to meet standards, and the Agency thus believes it is not precluded from issuing permits for such facilities by operation of Rule 921(a) of Chapter 3". Therefore, the Agency has issued the necessary permit to install and operate trunk sewers serving the subdivision and will issue a permit for the lateral sewers in due course.

Under this set of circumstances we fail to see any arbitrary or unreasonable hardship to the Petitioner. The only hint of hardship has been Petitioner's claim that it will be unable to obtain additional customers if the Agency refuses to issue a permit for the installation of the underground sewer lines. The record indicates that this alleged hardship has not materialized.

The EPA recommends that the variance be denied since proof that the sewage treatment plant is currently in violation of Rule 404(f) is not in itself sufficient grounds for the grant of a variance. We agree and will deny the variance because Petitioner has failed to show that it will suffer an arbitrary or unreasonable hardship.

The record does not indicate that sewer connections to this facility have been prohibited either by the Agency or by this Board. The reasons for Petitioner's inability to meet the standards of Rule 404(f) are unclear from the record but will apparently be overcome through upgrading which is to be completed by September 1, 1974. Under those circumstances it would be proper to proceed with the installation of the sewers to the new subdivision. Construction at the subdivision should be authorized to proceed concurrently with the upgrading of the sewage treatment plant and the installation of sewer mains and laterals.

It is our opinion that the utility company already has what it requests and has failed to establish its legal right to a variance. Therefore, the variance petition will be denied without prejudice.

This Opinion constitutes the findings of fact and conclusions of law of the Illinois Pollution Control Board.

ORDER

It is ordered that the variance petition filed herein by Chickasaw Hills Utility Company, Inc. be and it is hereby denied without prejudice.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order was adopted this 25th day of July 1974 by a vote of 5 to 0.

