

ILLINOIS POLLUTION CONTROL BOARD
July 17, 1975

L and M APARTMENTS,)
Petitioner,)
)
v.) PCB 75-124
)
ENVIRONMENTAL PROTECTION AGENCY,)
Respondent.)

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

L and M Apartments (L and M) filed a petition for variance from Rule 962 of the Water Regulations with the Pollution Control Board (Board) on March 20, 1975. An amended petition was filed on March 27, 1975. No hearing was held.

L and M desires to build 12 low and medium income apartments in the Village of Toledo, County of Cumberland, which would be connected to Toledo's sewer system. Toledo's sewage treatment system was placed on restricted status by the Environmental Protection Agency (Agency), pursuant to Section 39 of the Environmental Protection Act and Rule 962(a) of the Water Regulations, on January 16, 1975. In order for L and M to obtain a Rule 951 construction permit a variance from Rule 962 is required.

Toledo's sewage treatment plant was designed to treat 0.093 MGD and an organic load of 930 P.E. The Agency estimated, however, that the plant was receiving 0.069 MGD and an organic load of 1023 P.E. Toledo's 6-acre, single cell lagoon is not chlorinated nor are analyses of the lagoon effluent made by the Village. The Agency's grab samples show an average of 36.8 BOD₅, 93.5 SS and 117,970 fecal coliform per liter.

The Village intends to convert its single cell lagoon into a three cell aerated lagoon thereby qualifying for a lagoon exemption under Rule 404(f)(i). Due to Toledo's low priority number in the Federal Construction Grant Program, funding for the proposed treatment works will not be available in the near future.

A draft NPDES permit was sent out for public notice on March 28, 1975, having interim standards of 50 mg/l BOD and 100 mg/SS until October 31, 1976.

Sometime between March and May of 1975, the Village, upon a 1974 Agency recommendation, installed surface skimmer baffling around the inlet end of the effluent pipe to prevent

the discharge of floating material into the intermittent stream, Cottonwood Creek, the receiving stream. The Village, also upon Agency recommendation, installed extension collars on manholes near the treatment plant to prevent sewage overflow. These improvements were made due to the efforts of petitioner herein.

L and M's apartments would be financed by a F.H.A. loan. Petitioner hired an engineer, an attorney and a consultant, and performed a feasibility study and negotiated the loan and construction contract before the sewer ban became effective. The area is economically depressed and has a housing shortage. Construction of the building would provide both employment and housing which are badly needed.

The Board has in the past held that entering into contractual agreements prior to the actual start of construction does not in and of itself constitute an arbitrary and unreasonable hardship. Carrie F. Androcki et al v. EPA PCB 71-149, 2-363. However, each case must be decided on its own facts. American National Bank and Trust Company v. EPA, PCB 71-132, 2-230.

It is the Opinion of the Board that L and M has shown an arbitrary and unreasonable hardship would result if the variance is denied. Petitioner's efforts have improved the treatment works in Toledo. The area needs housing and employment. If construction does not begin soon the F.H.A. may withdraw its approval of Petitioner's loan, and no other financing is available to L and M. The benefit which the public would receive from the apartments far exceeds the small burden placed upon it. In consideration of the foregoing, the Board will grant Petitioner's variance. This Opinion constitutes the Board's findings of fact and law in this case.

ORDER

It is the Order of the Board that L and M Apartments be and hereby is granted a variance from Rule 962 of the Water Regulations. Said variance shall be void unless utilized within two years of the date of this Order.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 17th day of July, 1975 by a vote of 5-0.


Christan L. Moffett, Clerk
Illinois Pollution Control Board