

ILLINOIS POLLUTION CONTROL BOARD
June 14, 1972

CITY OF SILVIS)
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 v.) # 72-141
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 ENVIRONMENTAL PROTECTION AGENCY)

Larry Eaton, Assistant Attorney General, for the Environmental
Protection Agency

N. L. McGehee, McGehee, Boline & Whitmire, for City of Silvis

Opinion of the Board (by Mr. Currie):

Silvis petitions for a variance to allow the connection of twenty-nine lots to sewers tributary to its sewage treatment plant. The Agency has denied permits for the construction of lateral sewers to accomplish the connection (R. 18-19) on the ground that the treatment plant is inadequate and that additional connections therefore would allow the discharge of inadequately treated sewage in violation of the statute and regulations.

Conceding the need for plant improvement, Silvis urges that the lesser of two evils is to permit connection of the lots to the sewers. The evidence is graphic as to the need to remedy the present situation. On twenty-three of the lots there are existing homes whose wastes are discharged to septic tanks. Due to unfavorable soil drainage conditions (R. 33) the septic tanks function poorly, with atrocious results:

Initially the effluent from the septic tank started to back up into the house As of right now in the back of the yard there is a big pool of effluent, septic tank liquid, you can smell it and see it on top of the ground, it won't seep down; in order to keep the water from backing into the house we had to get the soil off, we lifted it off the tank so when there's too much going into the tank, rather than back up, it flows around the septic tank (R. 67-68).

Other residents affirmed that they had similar problems (R. 77-78). The Administrator of the County Health Department testified he had been called more than once to investigate, had seen septic

effluent standing in yards, and had smelled a septic-tank odor at the time (R. 21-24). He painted an alarming picture of the health hazard:

Given the right sequence of events, we can have one enteric disease outbreak, probably hepatitis; you have to have someone in the neighborhood with the disease and in a system that is malfunctioning in order for the organisms to get into the effluent on the surface of the ground but it's typical and normal for the children in this neighborhood . . . to frequent the shores of the stream and play there, so the potential for the children as well as these adults who frequent the shores of this stream to get a disease (R. 26)

There was also testimony, hearsay but uncontradicted and not objected to, that a doctor had attributed one significant allergy case to fungi produced by septic effluent in the back yard (R. 69-70).

The Agency agrees with Silvis that the effect of adding the wastes from these twenty-three homes to the sewage treatment plant, which discharges its unsatisfactory effluent to the Rock River, cannot be as bad as the present situation with sewage in people's yards. Though evidence as to the effect on the river is lacking, we cannot conceive of any circumstance in which that effect could approach the seriousness of the present situation. To deny the variance would leave the existing backyard health hazard in existence and leave the inadequate treatment plant effluent from the rest of Silvis going into the river; to grant it would eliminate the local hazard and add the effluent of twenty-three homes to that of the rest of the City. The City has in our view shown that inability to connect these existing homes to the sewers would cause an arbitrary or unreasonable hardship, and the variance will be granted as to the twenty-three homes. See *Winsor v. EPA*, #71-334 (Nov. 23, 1971); *Venable v. EPA*, #71-363 (Dec. 21, 1971). Permits, as both parties recognized, must be obtained for the construction, in order to assure compliance with other requirements such as the adequacy of sewer materials. All we do today is to remove the barrier created by the inadequacy of the treatment plant.

The City also asks that the variance extend to six additional lots in the same area that are presently vacant. Plainly there is no such pressing need to allow connections for these lots, since they are not now causing a health problem. The City says the plan is to apportion the cost of the new sewers equally among abutting owners, and that some question as to fairness might arise unless all are permitted to connect at once,

so that the entire project might be jeopardized (R. 65, 79-82, 88-89). We do not find convincing evidence in the record that no means of financing the construction can be found without allowing additional pollution. Building the sewers will confer significant benefits on all abutting landowners, since all will be able to connect once treatment is upgraded. No reason is given why, if this benefit should be deemed insufficient, the cost could not be apportioned among owners of existing homes, with others to reimburse them proportionately upon connection; or why Silvis could not pay the share of the owners of vacant lots and recoup the cost by later connection charges. As the Agency recommends (R. 86), we therefore authorize the connection now only of the twenty-three existing homes, leaving additional connections to be resolved by the Agency on a case-by-case basis under its permit power, subject to any further variances as may be granted by the Board on the basis of arbitrary or unreasonable hardship.

ORDER

A variance is hereby granted to permit the City of Silvis to connect the twenty-three homes described in the present record to sewers tributary to its sewage treatment plant, notwithstanding that the plant effluent does not conform with applicable standards.

I, Christan Moffett, Clerk of the Pollution Control Board, certify that the Board adopted the above Opinion this 14th day of June, 1972, by a vote of 4-0.



