

ILLINOIS POLLUTION CONTROL BOARD
January 10, 1974

NORTH SHORE SANITARY DISTRICT)	
)	
)	
v.)	PCB 73-134
)	
ENVIRONMENTAL PROTECTION AGENCY)	
)	

MR. MURRAY R. CONZELMAN, appeared on behalf of the North Shore Sanitary District
 MR. RICHARD W. COSBY and MR. JOHN E. SLATTERY, Assistant Attorneys General, appeared on behalf of the Environmental Protection Agency
 MR. RICHARD M. KATES, appeared on behalf of the League of Women Voters of Illinois
 MR. BERLE L. SCHWARTZ, appeared on behalf of the City of Highland Park

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

On April 5, 1973, the North Shore Sanitary District ("District") filed a variance petition seeking authority to issue an additional 2,500 single family permits representing 10,000 population equivalent (P.E.), from Paragraph 7 of the Pollution Control Board ("Board") Order in the case of League of Women Voters, et al v. North Shore Sanitary District, PCB 70-7, 12, 13, and 14 (PCB I-369, 396). Paragraph 7 of that Order adopted by the Board on March 31, 1971 provided as follows:

"7. The District shall not permit any additions to present sewer connections, or new sewer connections, to its facilities until the District can demonstrate to the Board that it can adequately treat the wastes from those new sources so as not to violate the Environmental Protection Act, or the Rules and Regulations promulgated thereunder."

The Environmental Protection Agency ("Agency") filed a Response recommending that the variance not be granted on May 4, 1973. On May 17, 1973 the Board granted the Petition to Intervene which had been filed by the League of Women Voters. The Board granted the City of Highland Park's Petition to Intervene on June 7, 1973. Hearings were held on June 4, and 7, 1973, and by Joint Motion of the Parties continued until January 2, 1974. The parties filed

Joint Stipulation at the January 2, 1973 hearing as set out on pages 3-5 of this Order.

The history of the present variance petition extends back to September 1, 1970 when the League of Women Voters ("League") filed an enforcement complaint with the Board alleging that the District was polluting the waters of Lake Michigan by discharging inadequately treated effluent directly into the Lake so as to violate the Water Quality Standards found in Sanitary Water Board Regulation - SWB-7 (League of Women Voters of Illinois et al v. North Shore Sanitary District, PCB 70-7, 12, 13 and 14, 1 PCB 369). The Board found that the District was indeed causing water pollution and ordered the District to proceed with an extensive program of abatement; and the Board imposed a sewer ban upon future connections to the District's Clavey Road and Waukegan Sewage Treatment Plants. On November 2, 1971, the District filed a petition seeking a variance to allow the District to issue 8,000 P.E. of permits because the District had undertaken the use of chemical additives which they alleged had increased the capacity at its treatment plants (PCB 71-343, 3-541). On January 31, 1972, the Board granted the District a variance to "add a total of 1,000 living units or 4,000 P.E. to the sewers tributary to the Clavey and Waukegan Plant" (Order of the Board, North Shore Sanitary District v. Environmental Protection Agency, PCB 71-343, 3-541, 557). Pursuant to a timely request for Reconsideration, the Board on March 2, 1972 determined that the District should be permitted to allow the addition of 5,000 permits or 20,000 P.E. to the sewers tributary to the Waukegan and Clavey Plant, subject to the restriction that one-third of the permits could only be tributary to Clavey and the remaining two-thirds to the Waukegan Plant (North Shore Sanitary District v. EPA, PCB 71-343, 3-697, 702). On October 24, 1972 the Board entered an Order stating that the so-called "Pfeffer exemption" found in Rule 404(f)(ii) Chapter 3, Water Pollution Rules and Regulations, applied to the District and rejected the Agency's position that it was not available (North Shore Sanitary District v. EPA, PCB 72-367). The Board extended the original variance granted pursuant to Board Order of March 31, 1971 in PCB 70-7, 12, 13 and 14 (1 PCB 369), and extended by Order of the Board on January 31, 1972 and March 2, 1972, PCB 71-343 (3 PCB 514 and 697), until March 2, 1974 in an Order dated February 14, 1973, PCB 72-451.

The District in the present variance petition seeks authority to enable it to issue an additional 2,500 permits or 10,000 P.E. because it has allegedly upgraded and expanded its Clavey Road Sewage Treatment Plant. Throughout the history of this proceeding the parties have always referred to permits and population equivalents (P.E.). A "permit" refers to the equivalent of a living unit housing four people. Thus while referring to 2,000 permits, the actual controlling number is 8,000 P.E. (2,000 x 4). The District

must equate a permit to an individual P.E. The parties have reached an agreement and submitted the following Stipulation:

IT IS HEREBY STIPULATED AND AGREED by and between all of the parties to the above matter, by their respective attorneys as follows:

1. That the Illinois Pollution Control Board has jurisdiction of the above cause and all of the parties thereto.

2. That on March 2, 1972, the Illinois Pollution Control Board granted a variance to the NORTH SHORE SANITARY DISTRICT "to add a total of 5,000 living units or 20,000 P.E. to the sewers tributary to the Waukegan and Clavey Plants" and at that time the Board ordered "The DISTRICT shall apportion the allotment under the variance between the subject plants in approximate ratio of one-third of the new connections to Clavey, the remainder to Waukegan".

3. That subsequent to the entry aforesaid, the NORTH SHORE SANITARY DISTRICT apportioned one-third of the permits for new connections to Clavey Road and issued all of said permits. That the NORTH SHORE SANITARY DISTRICT has requests for additional permits authorizing connection to its Clavey Road Plant in excess of 1200 new connections at the present time.

4. That on or about September 15, 1973, the NORTH SHORE SANITARY DISTRICT completed sufficient facilities at its Clavey Road Plant to increase the capacity of said Plant to ten million gallons per day and at the same time said DISTRICT increased the pumpage capacity of the Skokie Interceptor Sewer serving said Plant from 22 MGD to 30 MGD on the date of this Stipulation, and to 40 MGD by March 1, 1974.

5. That the NORTH SHORE SANITARY DISTRICT has diverted the dry weather flow from its sewage treatment plant at Lake Bluff, Illinois to the Clavey Road Plant and is in the process of diverting the dry weather flow from its Lake Forest and Cary Avenue Plants in Highland Park to the Clavey Road Sewage Treatment Plant.

6. That when the three lake front plants aforesaid, namely the plants in Lake Bluff, Lake Forest and Cary Avenue in Highland Park are diverted to the Clavey Road Plant, said plant will then be treating nine million gallons of effluent per day, leaving one million gallons daily excess capacity, expressed in terms of average daily flow, and specifically excluding wet weather flows.

7. That an additional 2,500 connections could be made to the Clavey Road Sewage Treatment Plant without exceeding the ten million gallons daily capacity.

8. That to add a measure of safety and to regulate the rate at which additional connections are made, the NORTH SHORE SANITARY DISTRICT should be granted authority to issue 2,000 permits (8,000 P.E.) authorizing connection to its Clavey Road Plant upon the following conditions:

- A. Each such permit shall be subject to the approval of the Illinois Environmental Protection Agency. When permit applications are received by the NORTH SHORE SANITARY DISTRICT, the DISTRICT shall send one copy of each to the Attorney General.
- B. No such permit shall authorize a connection to the system of the NORTH SHORE SANITARY DISTRICT until July 1, 1974. Each permit granted under this variance shall include a condition indicating that connection prior to July 1, 1974, will cause the revocation of the permit in question, and the DISTRICT shall take all steps permitted by law to require disconnection by the offender.
- C. No such permit shall be issued for connection for the benefit of any premises outside the actual legal boundaries (specifically excluding planning boundaries) as of the date of filing of the Petition For Variance until July 1, 1974, nor then if valid applications for premises within the actual legal boundaries of the DISTRICT are pending.
- D. Owners of existing dwellings served by septic systems and owners of single parcels of land seeking a permit (4 P.E.) to permit the construction of a single family home as the residence of an applicant, and for the connection of buildings of municipal or other governmental agencies shall have priority in allocation of permits over all other applicants.

IT IS HEREBY FURTHER STIPULATED AND AGREED by and between all of the parties to the above matter, by their respective attorneys, as follows:

9. That on or about February 1, 1974, the NORTH SHORE SANITARY DISTRICT plans to finish and have in operation the Highland Park lakefront interceptor. This interceptor will join the Northern two Highland Park plants, Park Avenue and Ravine Avenue Sewage Treatment Plants to the Cary Avenue Sewage Treatment Plant and will have sufficient capacity to transport both dry weather and wet weather flows. The Cary Avenue Plant is now connected to the Clavey Road Plant by an interceptor which has sufficient capacity to transport the expected flows from all three Highland Park plants.

10. That on or about July 1, 1974, the NORTH SHORE SANITARY DISTRICT plans to finish and have in operation its overflow treatment facilities at its Clavey Road Plant. When the overflow treatment facilities are completed and in operation, the Clavey Road Plant will be able to treat all of the flows to the three Highland Park Sewage Treatment Plants.

11. That on or about November 1, 1974, the NORTH SHORE SANITARY DISTRICT plans to have completed and in operation the first phase of its Middle Fork Interceptor. The first phase of the Middle Fork Interceptor will run from the Clavey Road Sewage Treatment Plant North to Chicago Avenue in Highland Park, approximately one-fourth of a mile South of Half-Day Road (Illinois Route 22). The DISTRICT plans to install a cross-connection between the Skokie Interceptor and the first phase of the Middle Fork Interceptor, thereby relieving the Skokie Interceptor South of Chicago Avenue, Highland Park, Illinois.

12. In recognition of the fact that by November 1, 1974, the Clavey Road Sewage Treatment Plant will be operating at its full planned capacity (with the exception of complete tertiary treatment), that the Highland Park lakefront interceptor will be completed, thus allowing diversion from the three Highland Park lakefront plants and that the first phase of the Middle Fork Interceptor will be completed relieving the overburdened Skokie Interceptor, the parties respectfully submit that the sewer ban imposed by the Illinois Pollution Control Board on March 31, 1971 be lifted for the NORTH SHORE SANITARY DISTRICT's Clavey Road Sewage Treatment Plant on November 1, 1974, or the date of connection of the Middle Fork Interceptor sewer to the Skokie outlet, whichever is later.

13. That this Stipulation shall be submitted to the Illinois Pollution Control Board along with the record made in the above case to date and represents the agreement and motion of all parties to the above cause and that an Order be entered consistent herewith.

Counsel for the District offered into evidence Petitioner Exhibit 1, a report entitled, "Clavey Road Sewage Treatment Plant Effect of Chemical Treatment" by Greeley and Hansen dated March 25, 1973 (R. 21). The Agency and the League objected and the Hearing Officer withheld ruling on admission of the exhibit. The Board hereby overrules any objection to the admission of Petitioner's Exhibit 1 into evidence and accepts Petitioner Exhibit 1 into evidence. The Board after a careful review of the transcripts and exhibits has decided to accept the proposed order presented in the Stipulation with certain changes and modifications.

The Board has modified Paragraph 8D of the Stipulation to insure that septic tank problems and single family dwellings are given priority by the District in the issuance of permits. Governmental and private institutions of a substantial public interest are given priority over other large scale developments. The ordering of priority as set out in the Board Order to follow is not intended to allow a developer to divide his development up into single family units so as to circumvent the Board's intention. Developers are to remain at the end of the priority list. However, the record supports the fact that only 1200 requests have been made, either formally or informally, to the District and that

most developers will undoubtedly will be able to obtain permits for their immediate construction needs. The District could possibly persuade developers to seek permits for only their immediate construction needs (1974 and 1975) to insure the optimum use of the 2,000 permits until the ban is lifted.

The Board has further amended Paragraph 8 by providing an additional Order #5 which establishes a reserve of 75 permits or 300 P.E. for single family dwellings to insure that those individuals seeking a sewer permit for a single family home will be able to obtain a permit. The record establishes a potential whereby the District could issue permits to developers before the expiration of the variance which would pre-empt the remaining unallocated permits so that an individual could not obtain a permit for a single family dwelling (R. 114). The District issued permits to developers outside of the then present District boundaries, in November and December, 1972 some three months before the variance expired (R. 114). Any individual, even those with septic tank problems, seeking a sewer permit for a single family dwelling would have been precluded by this action from obtaining a permit and would have had to seek a variance from the Board. By establishing the reserve for single family dwellings, the District may go through the priority list found in Order #4 and issue the 1925 permits for 7,700 P.E. to those who have present pending permit applications (subject to the restrictions in Order #3). Any unallocated permits remaining after those applications on file were satisfied, would be fulfilled by normal District procedures subject to the priority list. After the first 1925 permits are issued, the District would then issue permits to those individuals who next sought single family dwelling permits.

The above Opinion constitutes the Board's findings of facts and conclusions of law.

ORDER

The Illinois Pollution Control Board hereby grants to the North Shore Sanitary District, authority to issue 2,000 permits (8,000 P.E.) authorizing connection with the Clavey Road Plant upon the following conditions:

1. Each such permit shall be subject to the approval of the Illinois Environmental Protection Agency. When permit applications are received by the North Shore Sanitary District, the District shall send one copy of each to the Attorney General.

2. No such permit shall authorize a connection to the system of the North Shore Sanitary District until July 1, 1974. Each permit granted under this variance shall include a condition indicating that connection prior to July 1, 1974, will cause the revocation of the permit in question, and the District shall take all steps permitted by law to require disconnection by the offender.
3. No such permit shall be issued for connection for the benefit of any premises outside the actual legal boundaries (specifically excluding planning boundaries) as of the date of filing of the Petition for Variance until July 1, 1974, nor then if valid applications for premises within the actual legal boundaries of the District are pending.
4. The District shall issue permits subject to the following priority: Owners of existing dwellings served by septic systems; owners of single parcels of land seeking a permit to construct a single family home as the residence of an applicant; governmental and private agencies such as schools, hospitals, nursing homes, day-care centers, churches, etc. shall have priority in allocation of permits over all other applicants.
5. The District shall establish a reserve of 75 permits (300 P.E.) to be issued to single-family residences after the issuance of all 1925 permits (7,700 P.E.)

The District shall present to the Board on or before November 1, 1974, a detailed report on the current status of the District's compliance schedule including the status of the Gurnee Treatment Plant.

The Board retains jurisdiction in this proceeding to issue further orders as become necessary.

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 10th day of January, 1974 by a vote of 5-0.


Christan L. Moffett, Clerk
Illinois Pollution Control Board