

ILLINOIS POLLUTION CONTROL BOARD  
May 3, 1973

WILLIAM H. ROGERS

v.

ENVIRONMENTAL PROTECTION AGENCY

PCB 73-1

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

This is a petition for variance from Rule 912(b) of the Water Regulations which requires that a permit application for sewer construction or modification must be accompanied by a signed statement from the owner of the sewer and treatment works certifying that the facilities have adequate capacity to transport and/or treat the additional wastewater without violating any provisions of the Act or Regulations. Hearing was held on March 16, 1973.

Petitioner is engaged in the land development business in the Loves Park area. In 1968 he conducted negotiations for the purchase of a 57-acre tract of land near Rockford. After several years of planning and negotiations, petitioner and his partner submitted a written offer to purchase the land for a housing development. The offer was accepted in November, 1971 for \$217,250. Only \$1,000 has been spent on the land (R.32). They immediately began developing the land. Over the past year they had constructed a lake, a bridge, a roadway, the staking out of lots, and engineering and design work for other roads, a sewage system and water facilities. They are now indebted for the labor, materials and engineering of those improvements in the amount of around \$80,000, in addition to the purchase price of the land itself. They plan to build only 50 units in 1973, 72 multi-family units and 28 single-family units in 1974, and 21 multi-family and 4 single-family units in 1975.

On November 2, 1972 petitioner applied to the Rockford Sanitary District for a permit to construct the sewer main for the initial phase of the development. The District refused to certify the permit application because the proposed sewer extension was tributary to a surcharged sewer interceptor. Petitioner claims that he had not received any prior warning that his application would not be certified by the District. In fact, within the last year, the District had constructed a new sewer line to one boundary of the land in anticipation of the proposed development.

Agency grab samples of the District's treatment plant effluent taken during 1972 show BOD at 2, 4, 12 and 9 mg/l and suspended solids at 4, 110, 8 and 55 mg/l. The District monthly operational reports for September and October, 1972 show average BOD at 11 and 15 mg/l and suspended solids at 18 and 16 mg/l. The Agency's recommendation filed January 23, 1973 states that the Agency believes that the effluent quality of the sewage plant would not significantly decline were the development to be connected (p.3).

By the end of 1974 the District plans to have its sewer deficiency corrected through construction of an interceptor relief project. However, the project is contingent upon Federal funds (R.35, 57, 123). Even though the District could not certify the petitioner's permit application to the Agency, it did submit a letter to the Board recommending that the variance be granted. It also points out, and we agree, that the petitioner did incur a substantial commitment prior to March 7, 1972 which is the date upon which the Water Regulations were adopted.

There is, however, evidence in the record of much basement flooding in the area due to inadequate sewer capacity. It appears that most of the problem exists upstream from the Snow Avenue Pumping Station. The sewer to which petitioner's development would discharge is downstream from that station but some problem nevertheless exists, the extent of which is somewhat unclear. A letter of December 7, 1972 from Richard K. Johnson, consulting engineer for Mr. Rogers quotes a September 1972 report by Greeley and Hansen, also consulting engineers, that the East Side Low Level Interceptor into which this development would eventually connect is deficient in capacity from 2,451,000 gallons per day at Loves Park to 22,758,000 gallons per day at the treatment plant. The development would add 70,000 gallons per day to an already deficient sewer at average flow and 140,000 gallons per day at the probable maximum daily rate of flow.

The great concern to the Board is the inevitable increase in the extent of flooded basements. Testimony of Mr. Kenneth Miller places the number of known flooded basement incidents at 57 in the past 38 months in the area under consideration (R.126). He went on to state that perhaps 50% of these incidents were due to a pump outage (R. 128). But nothing is given in this record as to the extent of increased basement flooding either in number of homes or in height of flooding.

A flooded basement caused by sewage backup will create a health hazard from hepatitis, polio, salmonella, etc. as well as property damage and electrocution hazards. The petitioner has not borne his burden of proof to show the impact of his development upon the public health and welfare.

It was suggested by Mr. Kenneth Miller of the Rockford Sanitary District that 48-hour capacity holding tanks would be one way for

petitioner to avoid creating a worse flooding problem. (T. 118) The tanks would be pumped out at times of low flow in the sewers which would probably be at night. During a prolonged rainfall the tanks would have to be pumped out into trucks and hauled to the treatment plant. We agree with this approach and will make it a condition to granting the variance. The tanks would cost about \$36,250 (R.20). Total profit on the development is estimated at \$87,500 (R.30).

We are aware, from other sources, of a method whereby the capacity of sewers can be increased by the addition of certain chemicals which would make the wastewater "slippery". If the petitioner wishes to re-open this case in order to introduce any further evidence on his project's direct effect on the flooding problem or on the use of "slippery" water he may do so. Otherwise the variance will stand with the condition of using the holding tanks.


This opinion constitutes the Board's findings of fact and conclusions of law.

ORDER

Petitioner is granted a variance from Rule 912(b) of the Water Regulations so that they may receive a permit from the Agency without the need of the permit application being certified by the Rockford Sanitary District, but only on the condition that 48-hour holding tanks capacity is included in the project and that the wastewater from the tanks would be transported by truck to the treatment plant if the sewers are still overloaded at the end of any 48-hour retention period or any other such program as the Board and Agency shall approve that will not add to present basement flooding or any other health hazard (such as raw sewage surcharged from manholes onto streets, etc.)

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 3<sup>rd</sup> day of May, 1973 by a vote of 4-0.

  
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Christan L. Moffett, Clerk  
Illinois Pollution Control Board

