

ILLINOIS POLLUTION CONTROL BOARD
May 22, 1975

ZIMCO ENTERPRISES,)
Petitioner,)
)
)
v.) PCB 75-39
)
)
ENVIRONMENTAL PROTECTION AGENCY,)
Respondent.)

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

ZIMCO Enterprises, a division of ZIMCO Metalfab (hereinafter, "ZIMCO") seeks relief from a sewer ban imposed by the Environmental Protection Agency on the City of Highland, Illinois. More specifically, ZIMCO seeks a variance from Rule 962(a) of Chapter 3: Water Pollution Regulation of Illinois, which provides the standards for issuance of permits for treatment works, wastewater sources and sewer connections.

The petition for variance was filed on January 27, 1975. ZIMCO desires to add three sewer lines to its third subdivision of Town and County Estate so that it might develop property to be sold to individuals or contractors for the purpose of building single family residences.

On February 6, 1975 we ordered ZIMCO to submit additional information giving the strength of the effluent from the Highland sewage treatment plant and the condition of the receiving stream. A letter purporting to convey such information was filed on March 20, 1975. The Environmental Protection Agency (Agency) filed its recommendation to deny the variance on April 18, 1975.

The Sanitary Water Board placed the City of Highland on a sewer ban on February 20, 1969 because of the hydraulic and organic overloading of the City's sewage treatment plant. The Agency has continued to restrict its status with respect to sewer extensions imposed by the Sanitary Water Board. ZIMCO seeks a permit to provide sewer extensions which would serve approximately 34 additional lots in Town and Country Estates.

The Agency, assuming four persons per residence, estimates that granting this variance would result in an additional load on the City's sewage treatment plant of 136 population equivalents or 13,600 gallons a day of domestic waste or 23 pounds of BOD₅ per day. The Agency recommendation alleges that the Highland sewage treatment plant has a design hydraulic capacity of 0.55 mgd and an organic capacity of 7,000 P.E. Approximately 1 mgd has been reaching the treatment plant for the past three months. The plant consists of a bar screen working in parallel with a comminutor, three primary clarifiers in parallel, a dosing tank with a count meter, a trickling filter, a final clarifier, and a mechanical coil spring sludge dewatering filter. Effluent is discharged into an unnamed tributary of Sugar Creek which is tributary to the Kaskaskia River which is tributary to the Mississippi River.

Petitioner's response to the Board Order seeking additional information consisted of a letter which identified undated attached information as coming from the files of the City of Highland. The only substantial information contained therein is the average BOD loading of the treatment plant which is given as 1,250 pounds per day. It also contains the figure of 840 pounds per day of average suspended solids. The Agency considers this later figure unreliable since it is based upon an assumption of a standard of 0.15 pounds per day per capita. The information given on the condition of the receiving stream is limited to testimony given by an Agency employee, William Tucker, in connection with a biological stream survey conducted May 12, 1972. Mr. Tucker testified that the stream was polluted both above and below the treatment plant but that increased BOD loading at the plant would in all probability push the recovery base further downstream.

The Agency recommendation contains results of recent investigations which confirm this appraisal of this stream. These investigations by the Agency indicate that the stream is semi-polluted and unbalanced above the discharge and is polluted up to 1.5 miles downstream from the discharge. Additional contaminants would further degrade the receiving stream. Agency investigators have observed the effluent to be turbid gray. Monthly grab samples have shown the following contaminant concentrations in the effluent:

<u>Date of Sample</u>	<u>BOD5 in mg/l</u>	<u>S.S. in mg/l</u>	<u>Ammonia Nitrogen in mg/l</u>	<u>Fecal Coliform/100 ml</u>
8/6/74	240	160	11.1	3,600,000
9/11/74	25	41	3.0	60,000
10/31/74	80	60	9.0	11,000,000
12/5/74	60	70	9.2	640,000
2/13/75	240	12	10.0	1,100,000

In addition to the poor quality of the effluent, the Agency alleges that some bypassing has been occurring almost every day since the beginning of 1975. It also received several complaints since 1971 concerning the condition of the sewer system, the treatment plant, and the receiving stream.

ZIMCO cites several reasons why it should receive a variance. It alleges that sewer permits have been issued to the restrooms on Interstate 70, and that a local subdivider has permits covering enough ground for about 300 or 400 homes, which can't be built for many years. The Agency denies that any sewer permits have been issued to the restrooms on Interstate 70. The Petitioner appears to be correct, however. See City of Highland v. E.P.A., PCB 73-221, (August 23, 1973). The Agency also claims that no other sub-divider has been issued permits for sewer extensions servicing three hundred or more residences since the imposition of the sewer ban. Even if ZIMCO's allegations were true, these arguments would not be relevant without a showing that ZIMCO would suffer an unreasonable or arbitrary hardship if the variance were not granted. Petitioner completely fails to meet its burden in this respect.

Although no monetary figure is cited with regard to Petitioner's hardship, a figure of \$190,000 is alleged to have been spent on the development of a different subdivision which is not the subject of this variance petition. The Agency points out that any discussion of the cost of development is incomplete without also considering the income received from a sale of the lot involved. More importantly, the Petitioner has failed to show that it incurred any of its costs prior to the issuance of the sewer ban. The Agency alleges that ZIMCO was notified in a letter, dated September 12, 1969, that the City was under a sewer ban. We have previously denied variances where no substantial steps toward completion of the project have been taken prior to the imposition of a sewer ban, Monyek v. EPA, PCB 71-81, 2 PCB 125 (1971) and Wagnon v. EPA, PCB 71-85, 2 PCB 131 (1971). In this instance, Petitioner has not even alleged any substantial steps taken prior to the ban. As the Agency points out in its recommendation, a petitioner cannot "bootstrap" himself into a self imposed

economic hardship so as to justify the grant of a variance. Petitioner having failed to make out a case of arbitrary or unreasonable hardship, which would justify the substantial increase in the pollution of the receiving stream, must be denied the requested variance.


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

ORDER

Petition for variance from Rule 962(a) of Chapter 3: Water Pollution Regulations of Illinois is hereby denied.

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 22ND day of May, 1975 by a vote of 50.



Christan L. Moffett, Clerk
Illinois Pollution Control Board