

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS
March 17, 1971

MALIBU VILLAGE LAND TRUST)
)
) #70-45
 v.)
)
 ENVIRONMENTAL PROTECTION AGENCY)

OPINION OF THE BOARD (BY MR. LAWTON):

The Malibu Village Land Trust ("Malibu") owns a trailer park in Carbondale, Illinois. Since September 1, 1969, this park has contained 120 mobile homes, the sewage from which is treated by a single-cell lagoon. A permit to operate this waste stabilization pond was issued to the previous owners in June, 1965 pursuant to the Rules and Regulations Governing the Submission of Plan Documents and the Design of Sewage Works (SWB-1, continued in effect by Sec. 49(c) of the Environmental Protection Act). The design capacity is a population equivalent of 330 or 110 trailers computed on a square foot basis. Malibu petitioned for a variance on December 14, 1970, seeking permission to postpone compliance with the design capacity requirement "until the summer of 1971". A variance hearing was held on February 16, 1971.

Malibu's chief contentions are as follows:

- (a) That when it purchased the trailer park in August, 1969, the Sellers represented the load capacity of the treatment lagoon to be 125 trailers, when, in fact, the pond had not been constructed to the 125 trailer capacity reflected in the design plans;
- (b) That for this Board to deny the variance would impose unreasonable hardship on the tenants of the park and "great extra expense" to Malibu;
- (c) That delay in compliance will bring no harm to the public because no overflow from the oxidation pond occurs.

Pursuant to the recommendation of the Environmental Protection Agency, but with some degree of reservation, we grant the variance until July 31, 1971.

The difficulties of immediate compliance together with a bit of undeserved good fortune constitute the core of the case in Malibu's favor.

The evidence is uncontradicted that the discharge from the treatment lagoon (occasional flows of up to 20 gallons per minute, EPA Recommendation, p.1.) is not polluttional. This could mean that the population equivalent for 120 trailers (360) does not live in the park, that the sanitary facilities were used less than average during the times the EPA ran water quality tests on the effluent, or that the sewage treatment facility is more effective than anticipated. In any event, it is by chance that no pollution has occurred.

We are impressed, too, with the showing of hardship. To deny the variance could disrupt considerably the Malibu villagers (R26, 27), 7 to 10 families of which would have to relocate. Also, given the already water-soaked earth in which the construction of improvements must take place (R35), the spring rains might threaten the effective compaction of any earth excavated in late winter (R34). In light of the apparent absence of pollution, these burdens are too great either to deny the variance or to require immediate construction of improvements.

These factors alone, not the likelihood of "great extra expense" to Malibu if construction of improvements were to begin this winter (R24,25) (a self-induced hardship), cause this Board to grant the variance. Could innocent residents escape disruption or were the lagoon effluent polluttional, our decision might well differ.

The Board's reservation in granting this variance arises from the casual indifference with which Malibu approached its legal obligation. While the Seller may have misrepresented the actual sewage capacity of the lagoon, it was Malibu's obligation to ascertain the facts before it completed the purchase and assumed operation of the facility. Nor does it appear that once the overloading was known to Malibu that it acted with the dispatch called for by the circumstances. By July 31, 1970, Malibu knew the lagoon was overloaded. The EPA informed Malibu then (EPA Exhibit No. 1) that either the number of house trailers served by the lagoon should be decreased or the capacity of the oxidation pond must be increased to accomodate 120 mobile homes.

At this point, further delay could serve only to compound the error. Malibu chose the bureaucratic route. Rather than executing one of the only two options it could legally pursue (deleting the

excess trailers or applying for a variance), Malibu wrote to the EPA. Given the Agency's inexcusable delay in responding (2 to 3 months, R21) and another 1-1/2 to 2-1/2 months for Malibu to react, 4-1/2 months slipped by from the time Malibu first learned of its overloaded lagoon to the time of filing a variance request. In the meantime, unseasonal weather conditions, adverse to an immediate undertaking of the needed corrections, had set in.

Other complications exist, induced by Malibu's dalliance. Malibu, knowing of its violation after mid-summer, 1970, and applying finally for a variance in mid-December, 1970, failed to retain a consulting engineer until February 4, 1971, less than two weeks before the variance hearing. (R43-45).

In his testimony, Malibu's consultant could not state with certainty which type of sewage treatment system will be installed (R32,33,41,43) or when installation can be completed (R42,43).

Mr. McMahon for the EPA:

- Q. "Assuming no weather problems once construction is started, how long will it take until the project is completed?"

Mr. Webb, consulting engineer:

- A. "I will only answer this in a qualified manner, because I have not had time to complete my engineering studies nor my engineering plans.

The quantities of work involved are only a vague estimate in my own mind. I would anticipate that the middle of July or something of this nature would be the soonest that you could reasonably expect to complete it."

It is these errors of indifference, the direct products of Malibu's rather shoddy handling of its environmental obligations, which prompt the Board to impose a \$100 penalty as a condition to granting the variance. The EPA, in presenting its case, stressed heavily the fact that the design criteria of pollutional control devices are established for public protection (R50-51) and must be taken seriously. A citizen's group, The Committee for Ecological Action, Carbondale Branch, investigated the lagoon situation and recommended that Malibu be "censured for negligence" (R46-47).

Accordingly, this penalty is warning to those who, without considering hazards to the environment, carelessly purchase, operate

or enlarge facilities possessing pollution potential when extended beyond their design capacity. Those who purchase such facilities rely on the representations of the seller at their peril. When operating a facility with the potential of pollution, one must determine for himself what is necessary for compliance. This responsibility cannot be shifted.

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

ORDER

The Board having considered the transcript and exhibits in this proceeding, hereby grants the petition of Malibu Village Land Trust to operate with the present load of 120 trailers in violation of SWB-1 (continued in effect by Sec. 49(c) EPA) until July 31, 1971, subject to the following terms and conditions:

- (1) By April 15, 1971, Malibu Village Land Trust shall submit to the EPA plans and specifications for the above required improvement.
- (2) On July 31, 1971, Malibu Village Land Trust shall have completed construction of and have in operation a three-stage lagoon or a mechanical aeration system for treating the sewage of 120 mobile homes.
- (3) No mobile homes shall be added to the park until Malibu Village Land Trust is in compliance with the design criteria of SWB-1.
- (4) Malibu Village Land Trust shall post with the EPA by April 15, 1971, a personal bond or other security in the amount of \$5,000, which sum shall be forfeited to the State of Illinois in the event the sewage treatment facility in question remains loaded beyond design capacity after July 31, 1971 and Malibu Village Land Trust has received no extension of this variance.
- (5) Malibu Village Land Trust shall pay to the State of Illinois, on or before April 22, 1971, the sum of \$100 as a penalty for violation of the statute and of the regulation with regard to the design capacity of sewage works.

- (6) The failure of Malibu Village Land Trust to adhere to any of the conditions of this order shall be grounds for revocation of the variance.
- (7) Petition for extension of this variance or modification of this order shall be filed no later than May 31, 1971.

I, Regina E. Ryan, certify that the Board adopted the above opinion and order _____, 1971.

Regina E. Ryan
