

ILLINOIS POLLUTION CONTROL BOARD
October 20, 1988

VILLAGE OF LAKE VILLA,)
)
 Petitioner,)
)
 v.) PCB 88-37
)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

MR. JOHN M. MULLEN APPEARED ON BEHALF OF PETITIONER;

MR. JOSE L. GONZALEZ, JR., APPEARED ON BEHALF OF RESPONDENT.

OPINION AND ORDER OF THE BOARD (by R. C. Flemal):

This matter comes before the Board upon filings by the Village of Lake Villa ("Lake Villa") of a Petition for Variance on February 19, 1988 and of Amended Petitions for Variance on March 15, 1988 and June 30, 1988.

Lake Villa seeks variance from 35 Ill. Adm. Code 312.101 to allow it to operate its wastewater treatment plant ("WWTP") with a Class 3 operator for the time such operator is engaged in upgrading his certification to the required Class 2; the requested term of the variance is to February 1, 1990.

For the reasons cited below, the Board denies Lake Villa's request.

PROCEDURAL HISTORY

The Illinois Environmental Protection Agency ("Agency") filed its Recommendation in this matter on May 4, 1988. The Agency recommends denial, contending that Lake Villa has failed to demonstrate arbitrary or unreasonable hardship, that financial considerations are minimal, and that there are significant environmental factors (R. at 7).

Hearing was held August 26, 1988 at the Lake Villa Village Hall. Lake Villa submitted 14 exhibits ("Pet. Exh.") and the Agency submitted 20 exhibits ("Agency Exh."). Members of the public attended the hearing.

Subsequent to hearing the Hearing Officer established a schedule providing for simultaneous filing of briefs on or before

September 15, 1988, a schedule which was premised on the belief that the hearing transcript would be available to the parties prior to that date. The parties duly filed their briefs, notwithstanding the fact that the transcript was not delivered to the Board until September 19, 1988. Accordingly, the Board on September 22, 1988 on its own motion granted the parties leave to supplement or amend their briefs by September 30, 1988. Lake Villa filed an amended brief ("Pet. Brief") on that date.

BACKGROUND

Lake Villa is a Illinois Municipal Corporation located in Lake County, Illinois, along the shores of Deep Lake and Cedar Lake. Its population is 2,396 according to a 1987 special census (R. at 40).

Among other facilities, Lake Villa owns and operates a WWTP which uses an activated sludge system and has a design average flow of 0.3 million gallons per day. Discharge is to Eagle Creek. Eagle Creek flows into a marsh which at times is connected to Long Lake which drains into Squaw Creek and thence Fox Lake (Agency Exh. 15 at 2).

Pursuant to 35 Ill. Adm. Code Part 309, the WWTP is required to and does hold an NPDES permit, #IL0021342.

All NPDES-permitted treatment works are required to be under the direct supervision of a certified operator, pursuant to 35 Ill. Adm. Code 312.101:

No person shall cause or allow the use or operation of any treatment works for which a permit is required by Part 309 unless the operation of such treatment works is under the direct and active field supervision of a person who has been certified by the Agency as being competent to operate the particular type or size of treatment works being used or operated.

Lake Villa's WWTP is classified as a Group 2 facility pursuant to 35 Ill. Adm. Code 380.401(a)(2). Group 2 facilities require an operator certified at Class 2 or higher. Lake Villa's current WWTP operator, Mr. Kevin Hinderliter, is certified at Class 3¹. As of time of hearing, Mr. Hinderliter lacked 25 months of the 72 months of experience needed to qualify for the Class 2 examination (R. at 199). However, Mr. Hinderliter has

¹ In addition to operation of the WWTP, Mr. Hinderliter also is operator of Lake Villa's public water supply system, for which he possesses proper certification (R. at 62, 119).

completed accredited courses at the College of Lake County and is enrolled in others which, when completed, would allow him to sit for the Class 2 examination as early as December 1989 (R. at 199). Lake Villa believes that the higher-level certification can thus reasonably be expected to be achieved by January, 1990.

Prior to September 1988 Lake Villa achieved compliance with the certification requirement by contracting for the part-time² services and supervision of a certified Class 1 operator, Mr. Robert Krause. However, on August 26, 1988 Mr. Krause served notice of termination of the contract effective September 24, 1988 (Pet. Exh. 11). Lake Villa now wishes to be able to continue solely with the services of Mr. Hinderliter. The requested term of variance is for the time period prior to the anticipated attainment of Class 2 certification by Mr. Hinderliter.

Lake Villa's WWTP has experienced and continues to experience various problems. On December 16, 1986 the Agency placed the Lake Villa WWTP on its critical review list because the facility was approaching design capacity. On the same day the Agency placed a section of the Lake Villa sanitary sewer system on restricted status because it had experienced sewer backups and bypasses to Deep Lake. On July 1, 1987 the WWTP itself was placed on restricted status after the Agency determined that the waste load exceeded the plant's design capacity (Agency Exh. 15). The WWTP remains on restricted status (R. at 216) due to hydraulic overloading (R. at 150, 167, 267) which produces, among other matters, occasional washout of media, sewer backups, and overflow of raw sewage (R. at 267-9). The Agency estimates that wet weather flows to the Lake Villa WWTP exceed design average flow by a factor of five or more (R. at 269).

The Agency also notes that during a compliance survey conducted on January 6, 1987, which was prior to the employment of Mr. Hinderliter, it "found numerous operational problems at the Lake Villa plant involving self-monitoring, record keeping, sludge disposal, plant obsolescence, storage lagoons, excessive flow and infiltration of water into the collection system (Agency Exhibit No. 18)" (Agency Brief at par. 9). The Agency again

² The Agency points out that it is not unusual for a facility to comply with the Section 312.101 requirements by employing a part-time contractual certified operator who supervises a full-time operator who is not certified (R. at 200). Section 312.101 does not in fact require that the properly certified operator be a full-time employee. The Agency cites 49 facilities which currently comply with 312.101 by use of a contract operator (R. at 200; Agency Exh. 6).

conducted a compliance survey on August 2, 1988 (Agency Exh. 19), which was during Mr. Hinderliter's tenure. While the Agency agrees that the second survey showed that operation and maintenance of the Lake Villa WWTP had improved and that better and more consistent process control testing was being performed (Agency Brief at par. 7), problems still exist. These include: 1) difficulty with nitrification; 2) stockpiling of dried sludge on site, which could cause a run-off problem; 3) plant obsolescence; and 4) hydraulic overloading (Agency Exh. 19).

While it is admitted that many of the problems associated with the Lake Villa WWTP are problems of the system and are not related to the experience of the operator (R. at 151, 275), the Agency contends that an appropriately experienced operator is more likely to be able to respond to system problems in a manner which mitigates their effect (R. at 167, 169, 268-9).

PRIOR ACTIONS

Both parties argue precedence of prior proceedings involving variance from wastewater treatment plant operator certification. While the Board finds that much of this argument is irrelevant in that each case before the Board involves individual circumstances and is judged on the merits of those circumstances, there is nevertheless some value in reviewing the instant request in the context of the implication that the Agency has shown inconsistency in its dealings with Lake Villa.

Lake Villa contends that the circumstances it now faces are similar to those it faced when it was granted variance, with Agency support, in a prior action before the Board (Village of Lake Villa v. IEPA, PCB 83-67, 53 PCB 17). In that case the operator who preceded Mr. Hinderliter also did not hold Class 2 certification, and the Board granted a variance for 17½ months, within which the Class 2 certification was sought and obtained.

The Agency, for its part, contends that it has supported operator certification variances only where one or both of two conditions occurs: hardship exists because of a recent change in Board rules and/or classification status of a wastewater treatment works (i.e., Village of Ashton v. IEPA, PCB 80-135, 39 PCB 591; Village of Frankline Grove v. IEPA, PCB 80-106, 39 PCB 167; Village of German Valley v. IEPA, PCB 82-75, 47 PCB 537) or a short time is needed for the current operator to obtain the required certification (i.e., Village of Herrin v. IEPA, PCB 80-145, 39 PCB 557; Village of Crossville v. IEPA, PCB 81-156, 45 PCB 156; Village of Marion v. IEPA, PCB 81-169, 45 PCB 153; Village of German Valley v. IEPA, PCB 84-27, 58 PCB 469). The Agency further contends that it has opposed variance requests where these conditions have not been met (i.e., Village of Stillman Valley v. IEPA, PCB 86-30, 70 PCB 24). The Agency

further notes that Lake Villa's prior variance, unlike its instant request, followed on the heels of a change in rules (R. at 205, 215). The Agency further distinguishes Lake Villa's prior variance from its instant request on the basis of differing financial hardship, a greater length of on-scene experience of the prior operator, and that the Lake Villa WWTP was not on restricted status at the time of the prior variance (R. at 205-6).

CONCLUSION

The decision before the Board is whether Lake Villa would incur an arbitrary or unreasonable hardship in the absence of the requested relief.

On the matter of hardship, Lake Villa contends that it has been unable to comply with the certification requirements of Section 312.101 due to circumstances beyond its control (Pet. Brief at 11). Lake Villa notes that when the vacancy for its WWTP operator arose, it sought applications from properly certified operators, but that no such applications were received. Placed in this position, Lake Villa contends that it was logical to turn to Mr. Hinderliter, who was the most qualified of the available candidates (R. at 75), who already possessed the certification necessary to operate Lake Villa's public water supply, and who had the evidenced desire to obtain the certification required for operation of the WWTP.

In spite of the Agency's implication that Lake Villa did not conduct this search with sufficient diligence (R. at 218-23), the Board can find no reason to conclude that Lake Villa pursued other than a reasonable course of action to this point, given both the application situation and Lake Villa's need for an operator who could serve both the public water supply system and the WWTP.

However, this is not to conclude that the unavailability of a full-time and fully certified operator at the time of Mr. Hinderliter hiring constitutes an arbitrary or unreasonable hardship as the matter now stands. Lake Villa has available the option to comply with Section 312.101 by contracting for the services of a properly certified operator on a part-time basis, as indeed it had done in its employment of Mr. Krause. The issue of hardship is therefore whether the continued employment of a operator in this type of limited capacity is arbitrary or unreasonable.

Lake Villa does not contend that it would be a hardship for it to locate a replacement for Mr. Krause. The Agency, in fact, has submitted a listing of 60 wastewater treatment plant operators resident in Lake County who have the certification

necessary to operate the Lake Villa WWTP (R. at 225; Agency Exh. 9 and 10), plus a list of 337 more resident in adjacent counties who are also so certified (Agency Exh. 9 and 10). It is not unreasonable to expect that among these operators there is at least one who would and could fill Lake Villa's needs on terms similar to those under which Mr. Krause functioned.

This notwithstanding, Lake Villa most recently contends that it would cost approximately \$22,000 per year to hire a properly certified operator for its WWTP (R. at 153, 166; Pet. Brief at 7-8). However, this figure is apparently premised on the hiring of a full-time Class 2 operator, and is clearly in discord with the costs that Lake Villa has actually incurred under its contract with Mr. Krause. In that case, Mr. Krause was paid at a rate of \$20/hour (R. at 84). For the beginning of his contract through July 31, 1988, he evidently worked a total of 76.5 hours and accordingly received remuneration in the total amount of \$1,530 (R. at 85). Prorated over the period of a full year, this amounts to approximately \$2,800 per year, or \$19,200 less than Lake Villa contends would be its future costs.

On the matter of environmental and public health, the Board notes that, in addition to assuring smooth day-to-day operation, a principal purpose of requiring an experienced wastewater treatment plant operator is to provide the maximum likelihood that the operator will be able to fully respond in the face of an emergency. This ability is particularly essential where a wastewater treatment plant is beset by physical limitations which enhance the probability that emergency actions will have to be undertaken, and where a wastewater treatment plant is associated with a particularly sensitive environment where the consequences of an emergency action may be most acute. Both of these elements occur in the instant matter. Here the Lake Villa WWTP is inarguably beset by extraordinary potential for system overloading and its attendant problems of both an environmental and public health nature. Moreover, there is an apparent unusual potential for pollution of the adjacent sensitive lake environments. The Board therefore finds that environmental and public health protection are necessarily served by the availability to Lake Villa of a properly certified wastewater treatment plant operator.

In summary, while the Board appreciates Lake Villa's need to constrain unnecessary expenditures in the face of demands on limited resources, the record simply does not support the contention that the cost to Lake Villa for a call-as-needed, properly-certified operator is incommensurate with the potential environmental and public health protection which such operator would provide.

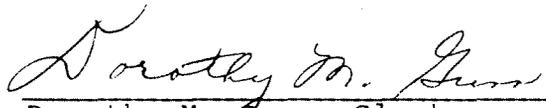
ORDER

The Village of Lake Villa's request for variance from 35 Ill. Adm. Code 312.101 is hereby denied.

Section 41 of the Environmental Protection Act, Ill. Rev. Stat. 1987 ch. 111¹/₂ par. 1041, provides for appeal of final Orders of the Board within 35 days. The Rules of the Supreme Court of Illinois establish filing requirements.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 20th day of October, 1988, by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board