

ILLINOIS POLLUTION CONTROL BOARD  
April 5, 1984

CITY OF HERRIN, AND HOUSING )  
AUTHORITY OF COUNTY OF )  
WILLIAMSON, )  
 )  
Petitioners, )  
 ) PCB 83-169  
v. )  
 )  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Respondent. )

OPINION AND ORDER OF THE BOARD (by J. Marlin):

This matter comes before the Board upon the filing of a variance petition by the City of Herrin (Herrin) on November 16, 1983 requesting relief from 35 Ill. Adm. Code 309.241 (old Rule 962 of Chapter 3). Pursuant to Orders of the Board dated November 18, 1983 and January 12, 1984 Herrin amended its petition. The Housing Authority of Williamson County (Authority) was joined as a necessary party. Illinois Environmental Protection Agency (Agency) filed its recommendation to grant the variance on March 21, 1984. There have been no objections to the relief sought and the right to a hearing has been waived.

Facts

The Authority proposes to construct 18 units of low-income housing north of Carroll Street and east of 13th Street in Herrin, Illinois. The units will be housed in nine buildings and will require a 790 foot extension of an 8 inch diameter sanitary sewer. The Authority, with Herrin, has obtained \$750,000 in financial assistance from the U. S. Department of Housing and Urban Development (HUD) to carry out the housing proposal.

The Herrin wastewater treatment plant (WWTP) was placed on Restricted Status on August 29, 1980 by the Agency for exceeding effluent limitations.

The Herrin WWTP serves 10,000 people and 4 major industries. The plant was constructed in 1950 while the sewer system dates back to 1938 and was modified in 1964. The plant provides secondary treatment. Raw sewage bypasses the WWTP during wet weather. Inflow from several storm sewers and infiltration during wet weather cause basement backups and manhole overflows.

The WWTP has a design average flow of 1.2 million gallons per day. Discharge is to an intermittent unnamed tributary of the Big Muddy River. The proposed project will add a daily average flow of 2600 gallons per day (Petition at 3).

Herrin's NPDES permit #IL0029165 expired on June 30, 1983 and Herrin has applied for its renewal. A draft permit specifying interim and final effluent limitations for Outfall 001 and 002 is under final consideration by the Agency and proposes the following:

OUTFALL 001

<u>Parameter</u>	<u>Interim Monthly Avg. (mg/l)</u>	<u>Final Monthly Avg. (mg/l)</u>
BOD <sub>5</sub>	25	10
TSS	70	12
pH	Range of 6 to 9	6 to 9
Chlorine Residual	0.75	0.75
Ammonia Nitrogen	Sample only (no limit)	

(Agency Recommendation at 3).

Limitations for bypass applicable to outfall 002 are in 35 Ill. Adm. Code 306.103(a) and (c). Outfall 002 limitations are not being met by the WWTP. According to the Agency, Herrin is capable of substantially complying with the interim effluent limitations. Currently, Herrin is participating in the Federal Construction Grants Program and is awaiting a Step 2 grant for the design of a new wastewater treatment plant that will meet the final effluent limitations above.<sup>1</sup> If the variance is not granted, Herrin would have to construct a separate wastewater treatment facility for the housing project or delay the project until restricted status is lifted.

ENVIRONMENTAL IMPACT

The petitioner must assess the environmental impact if the variance was granted. 35 Ill. Adm. Code 104.121. Herrin estimates that the housing project will add the following to the existing WWTP:

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<sup>1</sup>The effluent limitations may differ from the final limitations in the draft permit if discharge is routed directly into the Big Muddy River (Petition at 4).

IMPACT OF PROPOSED HOUSING PROJECT<sup>2</sup>

<u>Parameter</u>	<u>Existing Condition</u>	<u>Proposed Conditions</u>
Average Flow	0.980	0.983
Influent BOD	91 mg/l	91 mg/l
Influent SS	208 mg/l	208 mg/l
DAF =	2600 GPD	
DMF =	10920 GPD	
BOD <sub>5</sub> =	26 x 0.17#/Cap./Day = 4.42#/Day	
SS =	26 x 0.20#/Cap./Day = 5.2#/Day	

"The additional wastewater will not hydraulically or organically overload the existing system." (Petition at 6). Any negative effect will be for 3 years when the upgraded treatment facilities will be in operation (Id.). Any negative effect will be outweighed by the positive effect on the community in supplying much-needed low income housing.

Besides the impact on the existing WWTP, the impact on the waters of the State must be considered. An Agency inspection report stated the following:

'This (Big Muddy River) is possibly one of the poorest quality, at the point of withdrawal, both chemical and physical, sources of surface water within the Region 5 (Southern Region) area. The wastewater effluent from at least nine community WWTP's and the runoff from at least 11 coal mines discharges either directly into the Big Muddy River or one of its tributaries upstream from the Cities Water Company - Royalton WTP' (Herrin is the closest WWTP and is one of the largest). (Agency Recommendation at 7).

The proposed project will add a minimal amount of discharge to the WWTP and the impact on the environment will be negligible. Herrin will be adding improvements to its wastewater system in the near future. In addition, the proposed housing project will be required to reduce its wastewater volume by implementing water conservation measures.

In its amended petition Herrin commented on several inexpensive, easily installed water conservation devices which would lessen sewer loadings. Manufacturers estimate that these devices can reduce household water usage by up to 40 percent. Herrin concluded that it could not require that the devices be installed, but that it would have to be accomplished voluntarily through an educational program put on by the petitioner. (Amendment to Petition at 2 and 3). The Authority plans to use some water conservation devices throughout the proposed units. The Board encourages the use of such devices and will require an educational program as a condition for granting the variance.

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<sup>2</sup>Petition at 3,4

HARDSHIP

Petitioner must show that compliance with the Board's rules and regulations would impose an arbitrary or unreasonable hardship. Ill. Rev. Stat. 1981, ch. 111½, par. 1035. If the variance was denied, the Authority could only construct 6 of the 18 units and possibly lose the \$750,000 HUD assistance. If the Authority still wanted to build the 18 units, they would have to spend \$28,788 for an on-site wastewater treatment facility (Amendment to Petition at 1,2). This option is cost prohibitive relative to the cost of extending the sanitary sewers to the area (Petition at 7). The construction of this treatment plant would violate Herrin zoning ordinances because of the availability of sanitary sewers (Id.) HUD made a finding of need for this low-income project in Herrin. This project primarily will house elderly people. The Authority has a list of 250 low-income applicants awaiting housing (Petition at 8).

The Authority has sought public housing since February of 1980. The WWTP was placed on restricted status in late August, 1980. According to the Agency:

During the negotiation sessions of the PCB 79-239 proceeding in 1981, Herrin stated openly that it had applied for public housing and requested from the Agency, at that time, what was necessary for Herrin to do to warrant support from the Agency to extend sewer service to this public housing project. In 1981, the Agency responded that the most important criteria would be Herrin's commitment and progress toward building its treatment plant and commitment to operating the existing system as effectively as possible. [Agency Recommendation at 9].

It is apparent that Herrin, the Authority and the Agency were aware that this project was initiated prior to restricted status and during negotiations made provisions for its continuance. The Agency is satisfied that Herrin has now shown enough commitment to correcting its WWTP problems to be allowed to connect the Authority's project. Given this chain of events, the hardship was not self-imposed.

The Agency noted that Herrin has been involved in an enforcement proceeding for effluent and bypass excursions (Agency Recommendation at 5). Notwithstanding enforcement actions, in its recommendation the Agency stated:

While the Agency could readily justify its recommendation to deny based upon failures evident in the record, the Agency is impressed by the need for public housing in Herrin. [Agency Recommendation at 9].

The Board notes that prior variances have been granted where the need for public housing has been balanced with the environmental impact of adding to the sewage load of the existing facility. City of Abingdon and Knox County Housing Authority v. IEPA, 50 PCB 419; St. Clair County Housing Authority, et al. v. IEPA, 39 PCB 285.

In summary, Herrin sought public housing prior to the imposition of restricted status, is now showing commitment to correcting its WWTP problems, has no economically feasible alternative for treating waste water from the project, has a demonstrated need for low income housing for the elderly, and could lose \$750,000 in federal financial assistance if the variance is not granted. The environmental impact from granting the variance for the 18 units is minimal in this case. Upon balancing these factors with the minimal environmental impact, the Board finds that denial of the variance would impose an arbitrary or unreasonable hardship on the petitioner.

Therefore, based on the above, the Board holds that denial of the variance would impose an arbitrary or unreasonable hardship on the petitioner. The City of Herrin is hereby granted a variance from 35 Ill. Adm. Code 309.241.

This Opinion constitutes the findings of fact and conclusions of law of the Board in this matter.

#### ORDER

The City of Herrin is hereby granted a variance from 35 Ill. Adm. Code 309.241 to allow the Agency to issue construction and operating permits for the extension of a sanitary sewer to the proposed housing project site located north of Carroll Street and east of 13th Street in the City of Herrin, Williamson County, Illinois, subject to the following conditions:

1. Water saving faucets and water saving shower heads shall be installed throughout the 18 unit project.
2. Water dams or similar water conservation devices shall be installed in the flush tanks of all toilets in the 18 unit project.
3. The City of Herrin shall conduct an educational program on water conservation to encourage its citizens to voluntarily reduce water use and thereby relieve some of the load on its waste water treatment plant. At a minimum this program shall consist of the placement of at least two display advertisements, discussing the desirability of water conservation, in a newspaper or newspapers

generally circulated in Herrin. The advertisements shall generally describe the simple, inexpensive water conservation devices which are currently available, their cost, and how they might be obtained.

4. Within forty-five days of the date of this Order, Petitioner shall execute and forward to the Illinois Environmental Protection Agency, Compliance Assurance Unit, Water Pollution Control Division, 2200 Churchill Road, Springfield, IL 62706, a Certificate of Acceptance and Agreement to be bound to all terms and conditions of this variance. This forty-five day period shall be held in abeyance for any period during which this matter is being appealed. The form of the certificate shall be as follows:

CERTIFICATE

I, (We) \_\_\_\_\_  
 having read the Order of the Illinois Pollution Control Board  
 in PCB 83-169, dated \_\_\_\_\_,  
 understand and accept the said Order, realizing that such  
 acceptance renders all terms and conditions thereto binding  
 and enforceable.

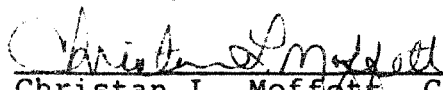
\_\_\_\_\_  
Petitioner

\_\_\_\_\_  
By: Authorized Agent

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 5<sup>th</sup> day of April, 1984 by a vote of 6-0.

  
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 Christan L. Moffett, Clerk  
 Illinois Pollution Control Board