

ILLINOIS POLLUTION CONTROL BOARD  
January 26, 1984

CITY OF RUSHVILLE	)	
and	)	
ROYAL REGAL PROJECTS	)	
	)	
Petitioners,	)	
	)	
v.	)	PCB 83-144
	)	
ENVIRONMENTAL PROTECTION AGENCY	)	
	)	
Respondent.	)	

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

This matter comes before the Board on the September 19, 1983 petition for variance filed by the City of Rushville (Rushville) and Royal Regal Projects (Royal Regal), a residential apartments developer. On November 21, 1983, the parties filed additional data (supplemental) at the request of the Environmental Protection Agency (Agency). The parties seek a variance from Sec. 12 and 39 of the Act and from Section 35 Ill. Adm. Code Sections 309.202(a) and (b)(2), 309.203(a) and 309.241. The purpose of the request is to allow a sewer extension from a proposed 24 unit residential apartment complex to connect into the sewer system tributary to Rushville's wastewater treatment plant, which plant was recently placed on restricted status. The Board finds that the relief sought requires variance only from Section 309.241 (a), standards for permit issuance, additional relief being unnecessary. On December 28, 1983, the Agency filed its recommendation to grant the variance, with conditions. Hearing was waived and none has been held.

Rushville is located in Schuyler County, West Central Illinois, not far from the Illinois River. Its wastewater treatment plant (WWTP), built with the aid of construction grant funds, began operating in 1972 and serves a population of 3,348 persons. The WWTP's current hydraulic load is 0.63 MGD, which is 175% above its design hydraulic load of 0.36 MGD. The WWTP discharges into an unnamed tributary of Crane Creek, which creek flows into the Illinois River. (Agency Rec. 3,4). Schuy-Rush Lake is about 2½ miles downstream from the WWTP and, the Agency asserts, is both a recreational lake and a potential water supply (Pet. 6, Agency Rec. 7). The stream is 7 day/10 year zero flow. The stream

itself runs through agricultural land and is used for "possible watering of livestock and wildlife." (Pet. 6)

Most of Rushville's sewer system, made up of both sanitary and combined sewers, was constructed in the 1930's, but some of the system was built before 1900. It is in poor condition, with broken joints, collapsed lines, storm drains, etc. Additionally, when an 8 inch pipe capacity is exceeded, the flows go to adjacent storm sewers through two bypasses. The Royal Regal complex is proposed to be located upstream of one of these bypasses. (Agency Rec. 3)

The WWTP also bypasses excess storm flows directly into the receiving stream at a manhole equipped with an unmonitored baffled bypass line. (Agency Rec. 4)

Rushville's applicable NPDES operating permit, which was issued June 10, 1977 and expired on March 31, 1981, contains interim effluent limits of 60 mg/l BOD and 80 mg/l suspended solids. The Agency received an application to reissue this permit on September 2, 1980, but has not acted on the application. (Agency Rec. 4) Rushville's DMR's and Agency grab samples taken during the fall of 1982 through August 1983 indicate that the effluent has generally stayed within these limits. (Agency Rec. 5) Sewage related debris has been observed during Agency inspections downstream of the WWTP. The Agency also feels that Schuy-Rush Lake could be impacted by the WWTP discharge and bypassing and overflowing from the sewer system (Agency Rec. 7). Rushville, on the other hand, feels that "water quality is improving" based on periodic stream samples, the latest showing the following:

- 1) 24 mg/l BOD, 1 mile downstream of the discharge point.
2. 14 mg/l BOD, 1 mile upstream from Schuy-Rush Lake.

(Pet. 6, Supplemental, 1)

Based on a recent questionnaire to its residents (Supplemental Attach #1 and #2) Rushville experiences frequent and widespread basement flooding from sewer backups and surface flow, although Rushville asserts that there are few cases of basement flooding in the proposed Royal Regal project area. The Agency disagrees with the latter assertion based on Pet. Attachment #2, a survey map (Agency Rec. 8). Since Petitioners did not identify the location of the project v Rushville, the Board will defer to the Agency's assertion.

Rushville is now back in the grants program. The Agency asserts that the WWTP has been organically and hydraulically overloaded since it began operating in 1972. Rushville has received a facility upgrading Step 1 grant, and has completed I/I and SSES analyses in 1976 and 1979 respectively. It is anticipating

grant monies for an additional SSES primarily to cover parts of the combined sewer system not covered earlier, including the two overflows. Availability of construction and grant money, at a level of 55%, not 75%, to expand and rehabilitate the system is uncertain.

However, Rushville's tentative timetable shows a submittal of a Facility Plan to the Agency by November, 1984. (Pet. 5, Agency Rec. 6) Meanwhile Rushville, at its own expense, has made improvements to the plant and collection system costing \$64,500, excluding City-supplied labor and materials. (Pet. 5) Because Rushville views the original grant project as an apparent failure, it intends to cautiously wait until the Step I data collection is completed before evaluating alternatives or committing any further large sums of money. (Pet. 7)

The Agency pointed out that the 1979 SSES found that infiltration and inflow can cost effectively be reduced by 126,000 gpd and 1.1 MGD with an expenditure of \$66,000 and \$73,000 respectively. However, the Agency acknowledges that these figures could change somewhat after completion of additional SSES work, and that no estimates of WWTP upgrading costs can be made at this time (Agency Rec. 6).

On June 13, 1983, the Agency received Royal Regal's application for a sewer extension permit. On June 20, 1983, the Agency denied the permits. Two days later, on June 22, 1983, the Agency issued to Rushville a notice of pending restricted status and a week later, on June 29, 1983, the Agency placed Rushville on restricted status because of the WWTP's 175% hydraulic overload, (Agency Rec. 3).

Royal Regal, from the fall of 1979, through the issuance of the restricted status spent "out-of-pocket" at least \$56,000 out of a total of about \$90,000 overall on real estate and project development. (Pet. 2, Supplemental, Attach. 3.) Of the remainder the record is unclear as to how much of the sums for projects paid for after restricted status were for projects committed to earlier.

Royal Regal had hoped to start the project construction by November 15, 1983, but now anticipates start-up and completion dates of April 1, 1984 and September 1, 1984 respectively with immediate occupancy following (Supplemental, 1).

The 24 unit complex, made up of five buildings, is expected to house 60 people, resulting in no more than a 1% increase in flow and 2% increase in population loading. The daily BOD and Suspended Solids discharged to the receiving stream are estimated to increase by 1% and 2.4% respectively (Supplemental 2,3). Regarding surface runoff, Rushville asserted that the project site is close enough to road ditches with sufficient capacity to

handle the additional runoff from the impervious areas. Rushville is cleaning the ditches and installing larger culverts. (Supplemental, 2).

A Farmers Home Administration (FmHA) loan will be used to retire interim construction loans. The FmHA will control rental rates and occupant eligibility based on income range (Supplemental 2).

The Petitioners maintain that effective compliance alternatives are not available. There is no available space for a seepage field or other private disposal system. Delay of the project until the grant project is completed and restricted status is ended would result in the loss of the present FmHA loan commitment and economic hardship severe enough to lead to possible bankruptcy (Pet. 1, Supplemental 2, 3). Compliance could be achieved by changing the size of the buildings and running individual service lines in a manner to fall within the "no construction permit required" provisions of Section 309.202 (b),(2) if the single building discharge is less than 1500 g/day. However, this would add new construction and engineering costs (Pet. 4).

The Agency does not dispute Royal Regal's effective alternatives. The Agency agrees that because a substantial portion of Royal Regal's costs were incurred before the imposition of restricted status, Royal Regal would suffer arbitrary or unreasonable hardship. The Agency conditioned its recommended grant of variance on a) no expansion of the project beyond the 24 unit complex and b) continued participation by Rushville in the sewer and WWTP system upgrading program as described in paragraph 6 of the Petition.

The Agency and the Petitioners agree that denial of variance would impose an arbitrary or unreasonable hardship on Royal Regal. Not only did Royal Regal incur large expenses before the imposition of Restricted Status but, starting in 1980, maintained "progress of project" contact with Rushville, whose City council in 1980 and 1982 indicated their belief that the project could be connected because the added load would not cause the NPDES permit interim limits to be exceeded and because "the Agency had recently issued a Permit for another apartment complex" (Pet. 8).

Under these circumstances, it was not unreasonable for Royal Regal to fail to check with the Agency. However, the Board is unwilling to allow any additional loading to a system as badly degraded as is described in this case without some commitment on the part of the Petitioners to take some steps to keep the environmental harm to a minimum. The Board does not favor allowing even a small additional load - and in this case the

additional load is not insignificant - where basement flooding occurs (City of Assumption v. IEPA, PCB 80-223). The added problems of basement flooding from surface flow, the bypasses from the sanitary sewers into storm sewers, the bypasses into the receiving streams, a WWTP effluent quality that needs improvement, and deteriorated sewers, taken together paint an unacceptable picture of existing or potential health and environmental damage.

The Board is at a loss to understand, and this record does not explain, why restricted status was not imposed by the Agency until eleven years after the plant went on continuous hydraulic and organic overload or why, as this record indicates, at least one permit was issued during that time. Nevertheless, the Board must take this situation as it finds it. While the Board recognizes Rushville's efforts to alleviate the problems, more must be done before the new Facility Plan is implemented sometime in the future if it is to grant a variance that allows additional organic and hydraulic loading into a system that is already grossly hydraulically overloaded, is bypassing and is backing up into basements.

Unfortunately, the record is too deficient in data necessary for the Board to condition a grant of variance in a manner that would appropriately alleviate what it considers an unacceptable environmental and health impact as balanced against the hardship.

For example, the record does not contain the location or layout of the project, the sewer layout, the SSES data containing a breakdown of the degree and location of the infiltration/inflow reduction should the Board wish to require that at least some of the defects in the sewer system be repaired in the near future. Nor does the record evaluate the option of installing temporary holding tanks for the project's discharge. (See Clem Juris and City of Sandwich v. Environmental Protection Agency, PCB No. 80-68, 39 PCB 420, September 4, 1980).

In denying this variance, the Board grants leave to refile and, upon receipt of the petition, the Board will expedite its consideration and request the Agency to expedite its recommendation.

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

#### ORDER

1. Petitioners, the City of Rushville and Royal Regal Projects are hereby denied a variance from 35 Ill. Adm. Code 309.241 (a).

IT IS SO ORDERED.

Board Member J.T. Meyer dissented.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order were adopted on the 26<sup>th</sup> day of January, 1984 by a vote of 6-1.

Christan L. Moffett  
Christan L. Moffett, Clerk  
Illinois Pollution Control Board