

ILLINOIS POLLUTION CONTROL BOARD
July 21, 1982

CITY OF CARMI,)
)
) Petitioner,)
)
) v.) PCB 81-59
)
) ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,)
)
) Respondent.)

DAVID L. STANLEY APPEARED ON BEHALF OF PETITIONER;

STEPHEN C. EWART APPEARED ON BEHALF OF RESPONDENT.

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

This matter comes before the Board on the petition for variance filed April 17, 1981 as amended May 21, 1981 by the City of Carmi (City). The City seeks variance from Rule 602(a) and 602(c) of Chapter 3: Water Pollution [since codified as Ill. Adm. Code Title 35, Subtitle C, Chapter 1, Sections 306.103(a-c)] as they relate to 5 specified sanitary and combined sewer overflows along the City's sewer system. In its Recommendation of August 4, 1981 and its Amended Recommendation of October 13, 1982 the Illinois Environmental Protection Agency (Agency) stated its belief that variance should be denied, although, alternatively, various conditions were proposed should the Board determine to grant variance. Pursuant to timely filed citizen objection to the City's request, public hearings were held on October 14 and December 9, 1981*, at which the objector presented testimony.

The City of Carmi, population 6,200, is located in White County. The City owns and operates a trickling filter sewage treatment plant constructed in 1951 which discharges its effluent into the adjacent Little Wabash River. The sewage collection system tributary to the plant was originally designed (at some unknown time prior to 1945) to be used only as a sanitary sewer, although at some point subsequently 10 stormwater catch basins were connected to the system.

*As the transcripts for these hearings were not consecutively numbered, references to the October transcript will be cited as "(R.)", and to the December transcript as "(2R.)"

The City's petition, as well as its Sewer System Evaluation Survey (SSES) which has been submitted for approval as part of its Step 1 work under the federal construction grants program, identifies 5 bypasses and/or overflow points causing discharge to the Little Wabash River:

1. A bypass servicing the East Carmi Lift Station, a dry-wet well station located on the river's east bank equipped with 2 150 gpm centrifugal pumps of which only one was operable at the time of filing of the Agency's October, 1981 Recommendation;

2. An overflow structure south of the City's sewage treatment plant (STP) located on an 18-inch sewer line on the river's west side. As of October, 1981 an improperly maintained flap gate remained open when covered by river water during high river stages, which inflow the Agency believes impedes flows to the STP;

3. A pump station bypass on the west side of the river at the STP itself;

4. A "continuously discharging" overflow which results from a broken manhole on the river's west side, located on the northern most side of the City's north interceptor line.

5. A "continuously discharging" built-in overflow from a manhole located on the river's west side.

The City states that all outfalls are active during a 1.44 inch per hour rain, and contribute a total of 7.464 million gallons per day of wastewater to the Little Wabash River. BOD concentrations of the overflows are estimated at a peak of 170 mg/l and at an average of 109 mg/l, and suspended solids concentrations are estimated at a peak of 334 mg/l and an average of 213 mg/l.

Compliance, it is alleged, could be achieved by construction of approximately 10,000 linear feet of relief interceptor lines and construction of completely new treatment facilities estimated to cost \$5,000,000 -- approximately \$1,700 per household. The City asserts that to require immediate compliance would impose an arbitrary or unreasonable hardship, as the City "does not have the funding resources to comply". The City states that as a result of the SSES work done since its receipt of a Step 1 grant in September, 1975, as amended May 1978, it received recommendations for various sewer rehabilitation projects, as well as recommendations for wastewater treatment plant expansion, construction costs for which would total \$3,880,000. With Step 2 construction grants funding, the City estimates that its costs would amount to \$1,090,500, or \$360 per household. As of April, 1981 the City projected that it would submit a revised SSES and facilities plan to the Agency by May, 1981, complete various design phases by March, 1982, award contracts by October, 1982 and complete construction by December, 1983.

Without much elaboration, the City concluded that the discharge from these outfalls "does not create any detrimental impact on the Little Wabash River" based on the River's average dilution ratio. Based on this conclusion, its participation in the grants program, and a commitment to eliminate all private inflow sources by October, 1981, the City requested the Board to grant variance for sufficient time to allow for completion of grant-funded rehabilitation work.

In its October, 1981 Amended Recommendation, the Agency advised that Step 2 grant funds should be available to the City. However, it recommended denial of variance on two grounds: adverse environmental impact, and the City's poor performance both in maintaining its system and in pursuing rehabilitation through the grants system.

The Agency stated that the City had failed to consider the impact on the river of continuous dry weather discharges. The Agency noted that a U.S. Geological Survey maintains a sampling and gauging station approximately 2 miles downstream of the City's STP. Biological data taken on eight sampling days between October 1978 and October 1979 indicated that pollution tolerant algae genera were present in dominant (greater than 15%) numbers. High concentrations of indicators of fecal contamination were also found, the average fecal coliform count per 100 ml. being 3,127, and for fecal streptococci being 3,630.

The Agency was further of the opinion that the City had been slow in completing its SESS work. The City submitted its first SESS in August, 1979, and had subsequently submitted two amendments, the last having been submitted to the Agency August 16, 1981. Earlier SESS were not approved by the Agency because all overflows and bypasses had not been eliminated; the last was not approvable because a suitable location for an upgraded STP had not been secured.

Finally, the Agency noted that the last revised SESS had identified some five ways in which infiltration/inflow sources, and therefore discharge from overflow points, could be eliminated or minimized, by e.g. repair of an existing pump, maintenance of a flap gate, and maintenance of pump alarms. It faulted the City for failure to take these steps, which could be taken at relatively minimal expense. While continuing in its belief that variance should be denied, the Agency requested that should the Board grant variance, that variance be conditioned on completion of such low-cost minimization steps, and on the City's adherence to the grant completion schedule and private inflow elimination program contained in its petition.

At hearing, the City presented testimony updating its April, 1981 petition. In response to the Agency's amended Recommendation, the City stated that certain of the listed remedial steps had been taken--replacement of a pump and repair of a flapgate--and that

others were being studied and pursued--making all alarms operative, providing multiple pumping capabilities at all stations, and eliminating illegal inflow sources. City Clerk, Frances Graves, attested to the fact that at its December 7, 1981 meeting the City Council had passed an ordinance requiring immediate disconnection of downspouts from sanitary sewers, and had approved rebuilding of two sub-station lift shafts (2R. 50-52, Pet. Ex. 9-10).

The City further stated, however, that it had not adhered to the timetable for grant submittals outlined in its original petition. The City proposed a revised timetable giving it roughly six more months to complete each of the actions listed in its original timetable, noting that its ability to meet this revised timetable was contingent on receiving timely Agency approval of various required grant submittals (R. 32-36).

Gary Sneddon of R.A. Nack and Associates, the City's consulting engineers, and the City's STP superintendant, David Woodruff, testified respectively as to the City's activities and submittals under the construction grant program, and of the City's responses since February, 1980 to various requests and suggestions made by Agency personnel who had inspected the STP and various parts of the sewer system. Three Agency employees presented testimony on these two points, as well as the environmental impact of the City's discharges: Saeed Khan, who has been in charge of reviewing the City's grant submittals since 1979, Dwight Hill and Charles Brutlag, both of whom had inspected the City's STP and tributary sewer systems in 1980-1981.

Concerning its progress through the grant program, it is the City's position that much of the delay is attributable to the time taken by the Agency for review of submittals (R. 22-23), and the Agency's insistence as a condition for final approval of its SSES that the City locate and secure a site upon which an expanded STP could be located. This, in the City's belief, is unreasonable until a final facility plan is completed, because a) it could involve expenditures for land options or purchases for a site which could later prove to be inappropriate, and b) this site selection requirement is not normally part of an SSES submittal or review (R. 28-29).

On behalf of the Agency, Mr. Kahn stated that he had been in monthly contact with the City, by telephone if not by letter, since the submittal of the original SSES, and that he had made internal reviews of the SSES and various requested supplemental information in September, 1979, April and August, 1980, and February, 1981 (R. 116, 118). Conferences were had concerning the City's STP and sewer problems in August and December, 1980 (Resp. Ex. 10). Mr. Kahn stated that the Agency had considered expediting release of construction funds for rehabilitation of the northern interceptor sewer, but in January, 1981 had determined not to do so, in order to avoid reaching a resolution to that particular sewer problem which would not be cost-effective in

terms of the problems of the system as a whole (Resp. Ex. 11, 12, R. 120-122). Given the information available to him, including the opinion of the City's consultant that the existing STP site has insufficient space upon which to construct expanded facilities, and problems of access to a proposed site located across a ravine from the existing STP, it continues to be Mr. Kahn's belief that identification of a suitable STP site is a justifiable condition for final approval of the SSES (R. 120, 124-127, Resp. Ex. 5).

Mr. Kahn additionally stated that, in his opinion, denial of variance would not affect the availability of grant funds for the City's project. Given the City's high priority number, it was the Agency's position that construction funds would be available upon the Agency's receipt of an approval SSES and facility plan (R. 124).

Dwight Hill testified that he had made five visits to the City's plant in 1980-1981. The possibility of the Agency's award of an emergency grant was the result of the Agency's discovery, in March, 1980, of the existence of Discharge Points No. 4 and 5, as the result of citizen complaints about raw sewage discharges into the Little Wabash River (2R. 6-10). Concerning the City's SSES, Mr. Hill commented that he felt its outstanding deficiencies was lack of knowledge concerning flow into the plant from the northern interceptor and the lack of specificity concerning proposed upgraded plant size, type, and location (2R. 22-23).

Charles Brutlag presented testimony concerning the environmental impact of the City's discharges. Mr. Brutlag testified that he had made inspections of the Little Wabash River in the Carmi vicinity on October 13 and December 9, 1981. Discharge from the broken manhole at the top of the river bank (point no. 4) was described as running "down-channel" into the river during overflow events. During both inspections, odorous "black sludge-like bottom deposits" were seen in the channel itself. During the October visit, Mr. Brutlag observed similar deposits in the river itself that fanned out from the discharge point which measured approximately one foot in depth. Due to the height of the river in December, Mr. Brutlag was unable to get down to the river edge (2R. 35, 38).

Discharge from the built-in overflow pipe (point no. 5) was described as "running into a channel leading 10 yards into the river" (sic). Sewage odor, black sludge-like bottom deposits, and paper products were noticed in the channel itself on both inspection dates, and bottom deposits were seen in the river in October (2R. 35-36, 38). A missing manhole cover near this point which had been reported to the City in October had been replaced as of December (2R. 35-38).

Jack Emery, Carmi resident and objector to the petition, testified that he too had seen sewage sludge deposits near the sewage treatment plant, and two miles downstream in the river

(R. 107-108, 110). Mr. Emery also testified generally as to the poor condition of various Carmi sewers over the course of years, and expressed his belief that Carmi has not paid sufficient attention to correcting its sewer problems in response to citizen complaints. (It should be noted that Mr. Emery's request for a hearing in this matter was by way of a petition signed by 200 citizens). Mr. Emery did not specifically state that he opposed grant of variance. Rather his interest was "to make darn sure that [sewer and STP rehabilitation] is done right, according to the way it is supposed to be done" (R. 113).

Dale McLaren, Executive Director of the Great Wabash Regional Planning Commission, spoke in support of the variance request. Mr. McLaren's main point was that construction should not be required to proceed on a non-cost effective "piecemeal basis", and indicated the willingness of his Agency to seek community development project grant funds for the City to further reduce its costs (2R. 25-26).

In reviewing this record, the Board finds ample evidence that the City's discharges are causing environmental harm. The City has demonstrated that it would be more cost-effective for it to proceed to address all of its problems, with the aid of grant funds, at a cost of \$360 per household, than to proceed only to address the problems posed by the identified outfalls and bypasses, without grant funds, at a cost of \$1700 per household. The Agency had demonstrated that grant, or denial, of variance will not affect the availability of grant funds for the project as a whole.

However, the Board finds that the City has not adequately explained why it did not meet the proposed compliance timetable contained in its original variance petition, or the reasons for its earlier delay in completing the specified SSES work. The City, through its attorney, stated its interpretation of this variance as being "a trade-off situation", in which the City "would get insulation from violation of the regulations of the Pollution Control Board in exchange for meeting [a] schedule of compliance...to...rehab the sewers and upgrade the sewage treatment" (R. 113). However, as the City itself noted at hearing, it has already received one variance conditioned upon adherence to a compliance schedule in White County's Evergreen Acres, Inc. and City of Carmi v. IEPA, PCB 80-37, May 1, 1980 (variance from restricted status). At that time, the Agency and the Board felt that the City was making "adequate" progress in the grants program, and "good faith attempts at bringing its discharge into compliance" 38 PCB 198-199. The City was ordered to "minimize bypassing of the STP," and "to actively pursue grant funds," and "to take timely steps towards bringing its discharge into compliance."

Of the two compliance dates there contemplated,--the first, for completion of sewer rehabilitation by November 1, 1981 has long passed; the second, for completion of STP rehabilitation by February 1, 1983 is clearly infeasible.

Based on the record before it, the Board finds that the City has failed to prove that denial of variance would impose an arbitrary or unreasonable hardship. In the light of the proven environmental harm, the Board sees no reason to shield the City from any potential enforcement actions resulting from its failures to comply with compliance timetables which the City itself has suggested. Variance is hereby denied.

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

ORDER

Petitioner, the City of Carmi, is hereby denied variance from Sections 306.103(a-c) of Ill. Adm. Code, Title 35, Subtitle C, Chapter 1.

IT IS SO ORDERED.

Board Member I. Goodman dissented.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 21st day of July, 1982 by a vote of 4-1.

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