ILLINOIS POLLUTION CONTROL BOARD
September 20, 1984

CITY OF MT. OLIVE AND MACOUPIN COUNTY HOUSING AUTHORITY, Petitioner,	)	
v.	)	PCB 83-9
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, Respondent.	)	

MR. RICHARD J. BERTINETTI, CITY ATTORNEY, APPEARED FOR THE CITY OF MT. OLIVE;

MR. JAMES K. ALMETER, ATTORNEY-AT-LAW, APPEARED FOR THE MACOUPIN COUNTY HOUSING AUTHORITY; AND

MR. BRUCE L. CARLSON, ATTORNEY-AT-LAW, APPEARED FOR THE RESPONDENT.

OPINION AND ORDER OF THE BOARD (by B. Forcade):

This matter comes to the Board on remand from the Fourth District Court of Appeals in Macoupin County Housing Authority v. IPCB, IEPA, and City of Mount Olive., General No. 4-83-07, May 7, 1984. The Board will briefly review the history of this matter which is explained more fully in Opinions and Orders of July 26, 1983, and September 23, 1983.

The City of Mt. Olive ("City") filed a petition for variance on January 24, 1983 and amended petitions on March 14, and May 2, 1983. The Petitioner requested the Board to allow continued operation of an unpermitted sanitary sewer extension serving an apartment complex on East Colfax street in Mt. Olive. The complex consists of three buildings with two apartments each. The Petitioner waived hearing. Responding to a Board Order, the City's first Amended Petition joined the apartment owner, the Macoupin County Housing Authority ("MCHA"), as a party respondent. No hearing was held. In a July 26, 1983, Opinion and Order the Board denied the variance for failure to prove arbitrary and unreasonable hardship. On August 29, 1983, MCHA moved to vacate the original Opinion and Order citing, inter alia that no hearing had been held. On September 23, 1983, the Board denied the motion to vacate.

MCHA appealed the Board's decision to the Fourth District Court of Appeals. The Court found all issues moot except whether MCHA was entitled to a hearing. The Court found MCHA was entitled to a hearing and remanded to this Board for such a hearing.

After remand, the Board held a hearing on August 10, 1984, in the Macoupin County Courthouse. The City, MCHA, and the Illinois Environmental Protection Agency ("Agency") all appeared and presented evidence. MCHA appeared as a party petitioner.

The sanitary sewer extension that services the six-unit housing project is tributary to the City's South Sewage Treatment Plant ("South Plant"). The South Plant services approximately 40% of the City of Mt. Olive's population of 2,357 while the North Sewage Treatment Plant ("North Plant") services approximately 60% of the population (Agency Rec. 2-3). The South Plant consists of an Imhoff tank, trickling filter, and final setting tank. Sludge is dewatered on sand drying beds with ultimate disposal planned for agricultural land (Agency Rec. 3).

The sewer system in the district served by the South Plant is over 50 years old and is physically decaying. This district experiences excessive infiltration and inflow problems that result in large volumes of storm water overloading the South Plant. During wet weather, area residents experience basement backups, the sewer system overflows at a number of points and raw and primary treated wastewater is routinely bypassed at the South Plant (Joint Exhibit A, Stipulation as to Certain Facts, Attachment C, p. 8). The added flow from the MCHA project, while small, does result in increased bypassing and decreased treatment (R. 120). Approximately 15 citizen complaints are received concerning basement backups and flooding after each heavy rainfall (R. 125). There are three sewer system overflows located at points 300 feet, 3,000 feet and 3,500 feet downstream of the MCHA housing project. At the first overflow point, the sewer system is relieved during surcharging by pumping wastewater directly from the manhole into a nearby farm field. At the other two overflow points, surcharging results in blowing the manhole lids off of the sewers (Agency Rec. 5).

The South Plant receives flows that hydraulically and organically overload its treatment capacity. Physically, the South Plant has deteriorated to the point where it is no longer capable of providing sufficient treatment. Because of these problems, the South Plant and the majority of the sewers tributary to it, were placed on restricted status by the Agency in the early 1970's (R. 104). The North Plant had been placed on restricted status by the old Sanitary Water Board in 1967. The City was involved in an enforcement action involving the operation of both plants and the resulting pollution of the receiving streams. IEPA v City of Mt. Olive, PCB 74-431, August 14, 1975, was settled by stipulation.

The City has received a Step 1, 2, 3 construction grant to rehabilitate and modify the sanitary sewer system and for improvements to the existing North Plant. The South Plant is to be abandoned once these improvements are made. Bids are currently being evaluated by the City and construction is to last approximat a year (Joint Exhibit A, Stipulation as to Certain Facts, p. 2).

During an inspection on August 12, 1982, the Agency discovered an unpermitted sewer extension, in two sections, along East Colfax Street (Rec. ¶5). The first section of eight inch sewer, about 200 feet, was probably laid by MCHA's contractor (R. 39). The remaining 150 feet were laid by the City to take advantage of the street being torn up by the apartment complex construction. The apartment complex is connnected to this eight inch sewer, but the sewer extends along the entire block. The City issued a city permit authorizing connection of the apartment complex to the sewer (R. 38). On October 28, 1982, the Agency sent the City an enforcement notice letter listing, among other claimed violations, the sewer extension (First Am. Pet., Ex. "A"). The apartment complex has been occupied since about September, 1982 and sewage is discharged through the sewer extension of concern here. The instant variance petition is to allow continued operation of the sewer extension for disposal of the apartment complex's wastes.

The City and MCHA advance four reasons for grant of variance: denial would impose an arbitrary and unreasonable hardship on the low income tenants, the connection has minimal adverse environmental impact, the connection is a mere technical violation, and there is no feasible alternative to sewer hook-up.

The six apartments are occupied by families of from two to four members. Family incomes range from $236 to $355 per month, derived from public aid, aid to dependent children and social security. These families pay rents of from $11 to $38 per month to MCHA. In addition, MCHA receives federal subsidies that have recently ranged from $63,000 to $136,000 for all of the housing under its control. Low-income housing in the Mt. Olive area is limited to non-existent. Additionally, Mt. Olive does not have emergency housing to accommodate the apartment complex tenants should the complex be closed (R. 24-34).

Records for water usage, a reasonable estimate of sewer discharges, show that the complex had usage of 266,900 gallons from August, 1982, through May, 1984. During the same time period, the South Plant received flows estimated at 1,366,115,000 gallons. Thus, the project contributed about 0.02% of the South Plant flow (R. 58-61, Pet. Exs. No. 1, 2 and 3). Petitioners' assert this ratio establishes minimal or no adverse environmental impact. They also assert that the complex could have been constructed legally had each building been connected to an existing sewer by a separate connection.

Petitioners claim that, for continued operation of the complex, there is no feasible alternative to the existing sewer hook-up. Their calculations evaluating a holding tank are based on retaining sewage flows during the five months of wet weather experienced in Mt. Olive. A tank approximately 10' x 20' x 90' would contain the 90,000 gallons of sewage. Petitioners assert that limitations on available space, governmental regulations and costs likely prohibit such a holding tank (R. 83-85).

The Agency argues that variance should be denied. They provided testimony that the City, MCHA, and the complex builder knew or should have known that Mt. Olive's South Plant was on restricted status long before the complex was built. An Agency witness testified that the complex flows would increase the frequency or duration of overloading at the South Plant, bypasses, and over flows (R. 101-105). The alderperson for the affected area testified that during rainfall, complaints about basement backups of sewage are frequent and numerous. She has observed basements flooded hip high with sewage (R. 124-128).

In determining whether variance should be granted, the Board must look to the content and intent of the Environmental Protection Act ("Act") and relevant regulations regarding sewer construction. Section 12(c) of the Act provides that no person shall:

> Increase the quantity or strength of any discharge of contaminants into the waters, or construct or install any sewer or sewage treatment facility or any new outlet for contaminants into the waters of this State, without a permit granted by the Agency.

The Board's regulations implementing this section have attempted to balance environmental protection benefits of having quality sewer construction with limited state resources. A strict interpretation of this section would require the Agency to review and issue permits for the construction of virtually every sewer to a single family residence in Illinois. The administrative cost of such a program would far outweigh the benefits. Consequently, Board regulations, at 35 Ill. Adm. Code 309.202(b)(2), exempt small single buildings having only domestic sewage from the permit requirements:

> b) Construction permits shall not be required for the following: ...
>
> 2) Any treatment works, sewer or wastewater source designed and intended to serve a single building and eventually treat or discharge less than an average of 1500 gallons per day (5700 l/day) of domestic sewage; or (See also: 35 Ill. Adm. Code 309.204(c))

These permit requirements apply to every sewage system in the State of Illinois, whether the facility is on restricted status or not. Once a sewage treatment facility is on restricted status for violations of the Act or relevant regulations, the Agency is prohibited by Section 309.241 from issuing <u>any</u> permit to construct or operate a new sewer introducing pollutants.

Thus, the exclusion for single buildings with domestic sewage flow below 1500 gal/day does not arise from a Board determination that such flows have no environmental impact at an overloaded plant, but from determinations regarding efficiency for a statewide permitting system. American National Bank v. IEPA, PCB 83-106, May 3, 1984. The Board's determination on environmental impact is that once a plant is on restricted status, no new permits may issue.

The Board finds that the Apartment complex consists of three buildings and has a design flow of greater than 1500 gallons per day. Consequently, permits are required for the sewer lines. Since restricted status was imposed in the early 1970's a variance from this Board is a condition precedent to any permit issuance. Title IX of the Act allows the Board to grant variances from the regulations where compliance would impose an arbitrary and unreasonable hardship. Such hardship is to be weighed against the environmental consequences likely to result from grant of variance.

This case brings a unique combination of facts to the Board. Petitioner MCHA did not construct the complex or the sewers. MCHA had a turnkey contract with the developer, under the supervision of the Chicago office of the U.S. Department of Housing and Urban Development ("HUD"). MCHA paid the price for the property and completed buildings, receiving the keys in exchange: HUD had more control over building and contract specifications. It thus appears that MCHA would not have had the authority to request permits or variances for sewering the complex.

Petitioner Mt. Olive, on the other hand, unequivocally offered to provide sewer service (Pet. Ex. 6), approved sewer service with construction specifications (Pet. Ex. 7), issued sewer permits (Pet. Ex. 8) and constructed sewers of its own. Mt. Olive had actual, as well as constructive knowledge that the South Plant was on restricted status.

The complex builder is similarly situated. He had actual knowledge of restricted status, had the authority to seek permits or variances, and failed to do so. After consultation with his architects and engineer, he concluded no permits were required. This was based on an erroneous interpretation of a letter from the Agency regarding a larger project consisting of many individual connections to a sewer line on restricted status.

The Board finds that the increased sewage flows from the complex will have a definite, but minimal, adverse environmental impact by increasing the frequency or duration of basement back-ups, bypasses, and overloading. The Board must grant or deny variance by balancing this environmental harm against that hardship that is not self-imposed. Here, the hardship that was not self-imposed is also minimal.

Because of the unique facts of this case, including the scarcity of low-income housing and total absence of emergency

housing, the Board will grant a variance. One key factor in this decision is that Mt. Olive, as a petitioner, has subjected itself to the jurisdiction of this Board, allowing the imposition of conditions which will rapidly alleviate the acute wet-weather problems.

In granting this variance, the Board is imposing several conditions. First, MCHA must install water-saving devices in the apartment complex and Mt. Olive must distribute information on water conservation for homeowners to all residents of the city. Second, Mt. Olive must prohibit any new connnections of any type to the East Colfax Street sewer lines that prompted this case.

Most importantly, the Board is imposing a condition to eliminate improper connections of downspouts to the Mt. Olive sanitary sewers tributary to the South Plant. Downspout connections to this sanitary sewer were listed as one of the major problems causing excessive wet weather flows (Joint Ex. A, Attachment C, pp. 6 & 9). Downspouts should not be connected to a sanitary sewer; they can be easily detected and easily disconnected. This should provide greater relief from wet weather problems than the additional apartment complex flows will cause. The Board will allow 90 days for Mt. Olive to prepare a plan for submission to the Agency. That plan must provide a viable mechanism for Mt. Olive to detect and enforce disconnection of at least 90% of those downspouts. That plan must be implemented, and 90% of the downspouts actually disconnected, not later than June 1, 1985.

The Board has provided a variance for the construction of sewer lines that have already taken place. However, the variance for the operation permit is for the MCHA apartment complex only, and only for one year. If at the end of one year improvements to the system have not resulted in a lifting of restricted status, the Board will scrutinize Mt. Olive's efforts to eliminate wet weather flows in deciding on any extension to this variance.

In the Board's September 6, 1984, Order in this case, the certificate of acceptance was inadvertently omitted. That oversight will be corrected here by modifying the Order to include an acceptance. The downspout elimination plan is due 90 days from September 20, 1984.

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

ORDER

I. The City of Mt. Olive and the Macoupin County Housing Authority are hereby granted a variance from Section 309.202(a) subject to the following condition:

a) this variance applies only to the approximately 300 feet of sewer and laterals already constructed along East Colfax Street.

II. The City of Mt. Olive and the Macoupin County Housing Authority are hereby granted a variance from Section 309.303(a) subject to the following conditions:

a) this variance applies only to the three buildings on East Colfax Street owned and operated by the Macoupin County Housing Authority.

b) This variance shall expire October 1, 1985.

c) MCHA shall install dams in all toilet flush tanks and flow restrictors in all shower heads in each apartment in the three building complex on East Colfax Street.

d) Within 90 days, the City of Mt. Olive shall develop and submit to the Illinois Environmental Protection Agency, 2200 Churchill Road, Springfield, Illinois 62706, a program for disconnection of downspouts to the sewers tributary to the South Treatment Plant. That plan shall provide for disconnection of 90% of the presently connected downspouts not later than June 1, 1985.

e) The City of Mt. Olive shall distribute to all residents of the City water conservation information for home-owners. Packets of such information may be available from Mark Enstrom, Illinois Department of Commerce and Community Affairs, 630 East Adams, 5th Floor, Springfield, Illinois 62701 (telephone: 217-785-6158).

f) The City of Mt. Olive shall prohibit any new connections, regardless of whether they serve single or multiple family dwellings or commercial establishments, to the approximately 300 feet of new sewer laid along East Colfax Street.

CERTIFICATION

I, (We) _____, hereby accept and agree to be bound by all terms and conditions of the Order of the Pollution Control Board in PCB 83-9, of September 6 and September 20, 1984.

City of Mt. Olive	Macoupin County Housing Authority
Authorized Agent	Authorized Agent
Title	Title
Date	Date

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 September, 1984 by a vote of 6-0.

Dorothy M. Gunn

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board