

ILLINOIS POLLUTION CONTROL BOARD
October 14, 1982

NORRIS CITY SANITARY DISTRICT)
and LAMPLIGHT MANOR)
APARTMENT COMPLEX,)
)
Petitioners,)
)
v.) PCB 81-187
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

MR. JAMES VAN WINKLE, ATTORNEY-AT-LAW, APPEARED ON BEHALF OF
THE NORRIS CITY SANITARY DISTRICT.

MR. E. H. PRICE, ATTORNEY-AT-LAW, APPEARED ON BEHALF OF LAMPLIGHT
MANOR APARTMENT COMPLEX.

MR. STEVEN C. EWART, TECHNICAL ADVISOR, APPEARED ON BEHALF OF
THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY.

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

This matter comes before the Board upon a November 23, 1981 filing of a petition for variance by the Norris City Sanitary District (NCS D) seeking a variance from old Rule 962(a) of Chapter 3: Water Pollution (now §309.241 of 35 Ill. Admin. Code, Subtitle C). Pursuant to a Board Order of December 3, 1981, NCS D filed an amended petition on April 14, 1982 joining Lamplight Manor Apartment Complex (Lamplight Manor) as a co-petitioner. The Illinois Environmental Protection Agency (Agency) had filed a recommendation that variance be denied on February 3, 1982. That recommendation was accompanied by a motion to file instanter which is hereby granted. NCS D had waived hearing, but based upon an objection filed with the Board on December 11, 1981, the Board authorized a hearing which was held on April 16, 1982.

NCS D and Lamplight Manor seek this variance to allow for the construction of a twenty-unit, low income, multi-family housing project to be located in Norris City and known as Lamplight Manor Apartments. The project is proposed to connect through a sewer extension to the NCS D wastewater treatment plant (plant) which has been on restricted status since June 15, 1977. The complex, when fully occupied, is proposed to house sixty people.

NCSD and Lamplight Manor hope to obtain funding from a grant by the Farmers Home Administration (FmHA) and allege that unless construction begins soon, the opportunity to obtain such funding will be lost, thereby creating a hardship on low income families in Norris City. However, construction cannot commence without a permit from the Agency, and due to the restricted status of the plant, the Agency cannot grant the permit unless the requested variance is granted.

The NCSD plant consists of a grit chamber, bar screen, Imhoff tank, dosing siphon, trickling filter, final clarifier and sludge drying beds, and has a design average flow of 0.125 MGD. Discharge from this plant is to an unnamed tributary of Bear Creek which is tributary to the North Fork of the Saline River.

The NCSD was placed on restricted status as a result of an Agency determination that the plant was being operated with a tributary waste load of approximately 170 percent of the design hydraulic capacity and that the sewage collection system did not have adequate capacity to transport peak flow rates.

Two bypasses are provided at the NCSD plant: one leads from the bar screen to an underground line discharging to the plant's outfall and the second comes from the effluent side of the trickling filter which also bypasses to the receiving stream. These are used during periods of moderate to heavy rainfall due to hydraulic overloading of the plant. The NCSD was issued NPDES Permit No. IL003155 on October 13, 1977, which requires effluent limitations of 30 mg/l of total suspended solids and five-day biochemical oxygen demand.

According to a January 29, 1981 Agency inspection, the NCSD plant is well kept and receives adequate maintenance, but due to inflow in the collection system and resulting hydraulic overloading, NPDES permit conditions are not being met. Furthermore, observations made during routine monthly effluent sampling by Agency personnel have reported that the effluent was slightly cloudy and occasionally contained some floating solids.

When condition downstream of the NCSD have been observed during the above-mentioned sampling visits, Agency personnel have reported observing sludge-like bottom deposits (R. 96 and 103). According to the January 29, 1981 inspection report, some solids were observed in the vegetation along the banks of the receiving stream below the NCSD plant's outfall (R. 96).

On February 25, 1977, an Infiltration/Inflow Analysis was completed. Based upon that study the Agency notified Norris City that the data submitted qualified it for grant funds for a Sewer System Evaluation Survey, which was completed in late 1978. A sewer rehabilitation design was submitted to the Agency in March, 1981 and approved on September 28, 1981. Rehabilitation

construction of the sewer system was to begin in November, 1981. The Agency's grants for Step II design and Step III construction of the plant have been obligated since March 18, 1980 with construction overdue as a result of treatment lagoon site location problems caused by the Prime Farm Land Clause of the FmHA Loan and Grant Programs. NCSD has recently decided to renovate its existing plant rather than pursue the construction of a lagoon which would utilize twenty acres of farmland.

NCSD was notified to proceed with sewerline rehabilitation construction bids in October, 1981. Approximately \$100,000 of manhole and sewerline rehabilitation is proposed for the collection system under the STEP III Construction Phase. Approximately \$680,000 of renovation and upgrading of the existing plant is also proposed under STEP II and STEP III. The construction work proposed will consist of upgrading and expanding the existing plant to an average design flow of 186,000 gallons per day which includes the projected population for Norris City in the year 2000, plus infiltration and inflow not eliminated under the Collection System Rehabilitation Project. Stormwater retention will be provided, plus ammonia nitrogen removal, tertiary treatment, and disinfection. Construction is expected to be completed in December, 1983.

NCSD and Lamplight Manor allege that the project will have a negligible impact on the sewage load to the plant since most of the families who will occupy the proposed project will be relocated from within Norris City and are currently living with friends or relatives or in substandard or dilapidated housing. Therefore, the proposed housing development will allegedly cause neither a substantial population increase nor a substantial increase in sewer treatment loads. NCSD officials and real estate consultants expect at least 80% of the future population to be from Norris City with a maximum of 20% from elsewhere in White County.

Furthermore, NCSD and Lamplight Manor estimate that even if the project is occupied by out-of-city residents, the increased load upon the plant will be 2,400 gpd based upon other similar housing projects. Using the standard 100 gpd/person, however, an increased load of 6,000 gpd would be expected. Allegedly, 4,400 gpd have been eliminated from the system during the last 3 years which would offset the increased contribution from the Lamplight Manor project or at least most of it.

However, maintenance of the status quo is not necessarily a desirable goal, nor is it the goal of the imposition of restricted status. Mr. Austin, who lives on Liberty Street in Norris City, has a "backflow of raw sewage" that "comes out in the yard" during periods of rain (R. 34-35). Before changing the placement of the sewer line vent in 1972, raw sewage came into his bathroom (R. 35-36). Even now he cannot flush his toilet "when the rain falls" (R. 36). He, apparently, is not satisfied that these problems "have remained the same" (R. 44-45). In its recommendation, the Agency stated that al-

lowing increased flows could aggravate overflows and basement backups.

Balanced against this environmental harm is the alleged hardship to low-income residents of Norris City, the potential loss of FmHA funding and the costs incurred by Lamplight Manor.

Architectural and engineering fees, surveys and related expenses from the time of application until March, 1982 totaled \$40,000 plus an additional \$5,000 in related expenses (R. 7-10). However, these expenses were incurred years after the imposition of restricted status, and, therefore, represent a self-imposed hardship.

The potential loss of FmHA funding is also not the sort of hardship contemplated by the Environmental Protection Act to support the granting of variance. As the Board held in H.J. Bergman Builders, Inc. v. IEPA, PCB 79-264, 38 PCB 163 (May 1, 1980), "the denial of federal funding or lack of other access to funding does not constitute an arbitrary or unreasonable hardship, especially where the project is a proposed one. This is all the more true where Petitioner has not proven an actual denial of funds, but pleads only their threatened denial." Although the general manager of Lamplight Manor testified that FmHA financing "would become more questionable with any extended delay at all, it would never be constructed" (R. 77), in a letter from the District Director of FmHA to the Agency, Mr. Teckenbrock stated that denial of variance "could affect funds for this project" (Amended Pet., Ex. #4). Based upon this evidence, the Board cannot find that the funding will necessarily be denied.

Several persons testified as to the need for low-income housing in Norris City (R. 13, 43, 74 and 76), although only opinions were expressed. Exhibit #4 of the Amended Petition is cited as proof of such need, but the only relevant statement in that regard is that the raising of tenant's income "has changed the need greatly," and "that it appears the project will be funded by" FmHA.

Thus, the Board is faced with balancing an ill-supported need for low-income housing against environmental harm that is now occurring. However, NCS and Lamplight Manor allege, and the Agency has presented nothing to rebut it, that the upgrading of the sewer system was to have been completed by August of 1982, that the project will not be completed until early summer of 1983, that full occupancy will "probably be in August or September of '83," and that completion of upgrading of the plant will be in December, 1983 (R. 86-87 and Amended Pet.). Further, the timetable for completion of the project did not take into account the nearly four month delay in the preparation of the transcript in this matter, such that there would probably be no added flows to the plant until late summer of 1983.

The Board will grant the variance conditional on occupancy only after the sewage plant upgrading is completed.

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

ORDER

Norris City Sanitary District and Lamplight Manor Apartment Complex are hereby granted variance from Section 309.241 of Title 35 of the Illinois Administrative Code, Subtitle C: Water Pollution, subject to the following conditions:

1. Norris City Sanitary District shall make a good faith effort to complete the upgrading of its wastewater treatment plant as expeditiously as possible;
2. Norris City Sanitary District shall take all reasonable actions to reduce the amount of surface water entering its sewer lines from identified defects in the system;
3. The apartment complex shall not be allowed to connect to the NCSO sewer system until the sewage plant upgrading is completed; and
4. Within 45 days of the date of this Order, the Norris City Sanitary District and Lamplight Manor Apartment Complex shall execute and forward to the Illinois Environmental Protection Agency, Enforcement Programs, 2200 Churchill Road, Springfield, Illinois 62706, a Certificate of Acceptance and Agreement to be bound by all the terms and conditions of this variance. This 45-day period shall be held in abeyance for any period this matter is being appealed. The form of the Certificate shall be as follows:

CERTIFICATION

We, the Norris City Sanitary District and Lamplight Manor Apartment Complex, having read the Order of the Illinois Pollution Control Board in PCB 81-187 dated October 14, 1982, understand and accept said Order, realizing that such acceptance renders all terms and conditions thereto binding and enforceable.

Petitioner

By: Authorized Agent

Title

Date _____

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Board, hereby certify that the above Opinion and Order were adopted on the 14th day of October, 1982 by a vote of 5-0.

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