

ILLINOIS POLLUTION CONTROL BOARD
April 5, 1984

CITY OF MENDOTA,)
)
 Petitioner,)
)
 v.) PCB 83-152
)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

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

This matter comes before the Board on the petition for variance of the City of Mendota (Mendota) filed on October 14, 1983. The Petitioner has requested a variance from 35 Ill. Adm. Code 312.101 in order to operate its wastewater treatment plant without the required Class 1 operator for a period of 2 years. On October 19, 1983, the Board entered a More Information Order and the Petitioner filed an amended variance petition on December 1, 1983. On December 15, 1983, the Board entered a second More Information Order and Mendota filed a second amended variance petition on January 27, 1984.

On February 29, 1984, the Illinois Environmental Protection Agency (Agency) filed its Recommendation that variance be denied for failure to allege and prove any hardship. Hearing was waived and none has been held.

The City of Mendota presently owns and operates a wastewater treatment plant (WWTP) which includes an aerated grit chamber, comminutors, bar screen, intermediate and final clarifiers, conventional mode activated sludge, a trickling filter for nitrification, multimedia filters, aerobic and anaerobic digestion, and chlorination. Mendota's sewer system contains four wet-weather bypasses and the city also has excess flow facilities with automatic feedback which are capable of treating 1.5 million gallons per day (MGD). The Petitioner's wastewater treatment facilities have a design average flow of 1.4 MGD and a design maximum flow of 2.8 MGD. (Rec. 2).

The Board previously entered an Opinion and Order in City of Mendota v. EPA, PCB 80-94, 39 PCB 294 (August 7, 1980) in which the Petitioner was granted a variance from Rule 1201 of Chapter 3: Water Pollution Control Regulations (now 35 Ill. Adm.

Code 312.101) until July 30, 1981 to allow the city additional time to secure the services of a Class 1 operator for its WWTP. Mendota has indicated that it hired a Class 1 operator shortly after the Board granted it a variance in PCB 80-94 and that this operator later became ill and died on March 18, 1983. (2nd Amended Pet., p.1).

Discharge monitoring reports submitted by the Petitioner pursuant to its NPDES Permit during the months of January, 1983 through December, 1983 indicated that five-day biochemical oxygen demand (BOD₅) concentrations have averaged 3.4 mg/l; total suspended solids (TSS) concentrations have averaged 2.8 mg/l; and ammonia nitrogen levels have averaged 0.83 mg/l--all well below the respective limits of 10 mg/l for BOD₅, 12 mg/l for TSS, and 1.5 mg/l for ammonia nitrogen. (Rec. 3). Thus, Mendota's effluent quality has been excellent in 1983 and previous discharge monitoring reports for 1982 reflect similar high effluent quality. However, the Agency has emphasized that such maintenance of excellent effluent quality may be partially related to Mendota's bypassing of raw sewage during some wet weather periods. (Rec. 3).

According to the Agency's records, the Petitioner currently employs 5 different operators. Two of these operators are uncertified, while the third operator, Mr. Charles McLaughlin, is approximately 4½ years away from eligibility to take the Class 1 examination. (Rec. 5). However, the Petitioner also employs a certified Class 2 operator, Mr. Bernard Billington, who has over 17 years of practical experience and has been eligible to take the Class 1 exam since 1974. Mr. Billington, who has worked for Mendota since November 15, 1966, plans on retiring in May of 1985. Nonetheless, he has indicated that he would be willing to stay on after his retirement date on a part-time, contractual basis until Mr. Arthur Frey, who passed his Class 5 examination on January 3, 1984, has obtained the requisite Class 1 certificate. Mr. Frey, who has worked for the Petitioner since June 26, 1978, could be eligible to take the Class 2 exam on, or after, March 16, 1984 if he successfully completes various courses that he is enrolled in. If Mr. Frey continues working and passes the necessary courses, he could take the Class 1 test on, or even before, March, 1985. (Rec. 4-6).

The City of Mendota has claimed that a hardship exists because of the death of their prior Class 1 operator on March 18, 1983 and has alleged that the cost of providing a new Class I operator would constitute a financial hardship. The Petitioner has stated that "the costs of hiring a full time Class 1 operator would be in excess of \$20,000.00 per year and that hiring one in an advisory capacity would be in excess of \$20.00 per hour." (2nd Amended Pet., p. 3).

However, the Agency has contended that "any claim of hardship is unfounded" because: (1) the Petitioner could comply with 35 Ill. Adm. Code 312.101 immediately at little or no cost if Mr. Billington took and passed the Class 1 exam; (2) Mr. Billington's pending retirement in May, 1985 doesn't provide a justification for his not taking the Class 1 test; (3) Mr. Frey could be qualified to take the Class 1 exam before Mr. Billington's scheduled retirement date; (4) Mr. Billington is willing to work on a part-time basis beyond his retirement date until Mr. Frey becomes properly certified; and (5) the deceased Class 1 operator's salary, or a portion thereof, should have already been budgeted or at least be available to cover any further costs in hiring a full-time or part-time Class 1 operator. (Rec. 5-6).

The Agency has also noted that the Petitioner has not: (1) submitted any detailed financial data supporting its "conclusionary assertion of financial hardship"; (2) provided salary figures for its previous Class 1 operator; (3) stated where the money presumably budgeted for the salary of the Class 1 operator went after his death; (4) taken any action to obtain the services of a Class 1 operator from March 18, 1983 until October of 1983 (when the Agency sent a letter pertaining to the necessity for a properly certified operator). (Rec. 6-7). The Agency has also stated that it "has knowledge that a Class 1 operator has applied for a position with Petitioner" and that another Group 1 wastewater treatment plant in the area has hired a part-time contractual Class 1 operator for \$312 a month. (Rec. 6-7). Moreover, the Agency has pointed out that the City of Mendota "was well aware of the need for a properly certified operator, as evidenced by the previous variance", yet did little to achieve compliance. Thus, although the Agency believes that the granting of the requested relief would have a negligible environmental impact, it feels that the Petitioner has not shown any hardship sufficient to justify the granting of the variance. (Rec. 7).

The Board agrees with the Agency and believes that the granting of the requested relief is inappropriate given the facts of this case. Denial of the variance will not cause any arbitrary or unreasonable hardship because the Petitioner has many economically reasonable and viable alternatives including: (1) having its present Class 2 operator immediately take the Class 1 test; (2) upgrading the certification of its other experienced operator; (3) hiring a part-time Class 1 operator at a reasonable cost; or (4) hiring a full-time Class 1 operator with already budgeted monies for a short period of time until the present Class 2 operator can be properly certified, etc. Thus, the Board believes that the Petitioner has failed to meet its burden of proof regarding the alleged financial hardship which it has claimed.

Accordingly, the Board will deny the Petitioner's requested variance from 35 Ill. Adm. Code 312.101.


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

ORDER

The City of Mendota's requested variance from 35 Ill. Adm. Code 312.101 in order to operate its wastewater treatment plant without the required Class 1 operator is hereby denied.

IT IS SO ORDERED.

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



Christan L. Moffett, Clerk
Illinois Pollution Control Board