

ILLINOIS POLLUTION CONTROL BOARD
August 2, 1984

SPRINGFIELD AND SANGAMON COUNTY)
COMMUNITY ACTION, INC. AND)
VILLAGE OF WILLIAMSVILLE,)
)
Petitioners,)
)
v.) PCB 84-32
)
ILLINOIS ENVIRONMENTAL PROTECTION)
AGENCY,)
)
Respondent.)

MR. BRUCE L. CARLSON APPEARED FOR RESPONDENT.

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

This matter comes before the Board upon the filing of a variance petition by Springfield and Sangamon County Community Action, Inc. (SSCA) on March 21, 1984. Pursuant to a Board more information Order dated April 5, 1984, an amended petition was filed and the Village of Williamsville (Village), Illinois was made a petitioner. The amended petition filed May 9, 1984 requests variance relief from 35 Ill. Adm. Code 309.241 to permit sewer connection of a 26 unit apartment complex to the wastewater treatment plant (WWTP) of the Village, now on restricted status. The Illinois Environmental Protection Agency (Agency) filed its recommendation on June 11, 1984 to deny the requested variance. There have been no objections to the relief sought and the right to a hearing has been waived.

SSCA is constructing a 26 unit housing development for the elderly and/or handicapped. The development is located 250 feet north of the intersection of Main and Elkhart Streets in Williamsville, Sangamon County, Illinois. The development will require a 261 foot, 6 inch diameter sewer line designed to discharge an average of 3,900 gallons per day of domestic sewage.

SSCA, a not-for-profit corporation, has received a loan from the U.S. Department of Housing and Urban Development (HUD) totalling \$2,097,800 for construction of the above 26 units in Williamsville and other units elsewhere in Sangamon County.

The Village's WWTP was placed on restricted status by the Agency on May 1, 1974 due to hydraulic and organic overloading. It consists of an influent bar screen, Imhoff tank, trickling filter and a final settling tank. A sludge drying bed and three

sewage bypass lines are also available. The WWTP has a design average flow (DAF) of 0.07 million gallons per day (MGD) and an organic load of 700 population equivalents (PE). The 26 unit development would add 39 PE to the system. Effluent is discharged to Wolf Creek.

A new WWTP is being constructed by the Village which will include 2 aerated and 1 nonaerated lagoons, 4 intermittent sand filters and effluent chlorination. The DAF flow will be 0.47 MGD with a PE of 1,625. As of April 23, 1984, the plant was 55% complete -- behind schedule. Petitioners assert that the new WWTP could be operational as early as September 1984.

Petitioners state that planning for the development began about December 10, 1980 with a preliminary application to HUD on May 15, 1981. A construction only permit was issued for the sewer line by the Agency on September 20, 1983. Construction of the development began October 1, 1983.

The construction only permit conditions essentially provide that SSCA may not apply for an operating permit until the Agency is notified of the completion of construction and that pursuant to an Agency inspection, that the new WWTP is operating as designed (Agency Rec. at 5).

The engineering plans call for a 4,000 gallon steel holding tank to handle the 39 PE daily. Petitioners cite a cost of \$14,697 for installation and \$220 per day for service. The Agency asserts that the cited costs are too high. It cites costs of between \$1,280 through \$2,000 for the equivalent in concrete tanks. In any event, the Agency represents that it was advised by a HUD representative that the holding tanks would be provided free by the contractor (Agency Rec. at 7). Sewage from any holding tanks would have to be trucked daily to the Springfield Sanitary District's WWTP. While Petitioners cite a cost of \$220 per day for service of the tanks, the petitioners do not state how many truckloads per day would be required to empty the tanks. A supplemental exhibit to the amended petition states that the cost would be \$60 per truckload or, if two or more loads, \$55 per truckload.

The petitioners must assess the impact the grant of a variance would have on the environment. 35 Ill. Adm. Code 104.121. Petitioners fail to do so adequately. Data from discharge monitoring reports (DMRs) show that the Village WWTP has flow in excess of its DAF. The Agency asserts that field observations within the last few years revealed extensive sludge banks downstream of the outfall (Agency Rec. at 6). It appears that sewage has been entering Wolf Creek.

Petitioners must also show that compliance with the Board's rules and regulations would impose an arbitrary or unreasonable hardship. Ill. Rev. Stat. 1983, ch. 111½, para. 1035. Petitioners assert that compliance would impose an arbitrary or unreasonable hardship because of the costs and the "short period" of time in which the new WWTP would be operational.

The economic hardship argument has insufficient support in the record. As for the time element, the few months alleged by petitioners until the new WWTP becomes operational in reality could be much longer. Construction is already months behind schedule. Additionally SSCA must await completion of the new WWTP and the Agency's seal of approval before SSCA may apply for an operating permit.

To the extent there is any hardship it is self-imposed. Petitioners knew of restricted status yet unfortunately relied on a 1974 opinion from an engineer retained by the Village as to the definition of restricted status (Exh. E to Am. Pet.). The Agency recommendation alleges that petitioners misquote an Agency letter dated May 16, 1974 (Agency Rec. at 8). However, this letter is from the engineer for the Village and therein he states that restricted status "does not prevent the connection of new individual customers to the existing sewer systems (emphasis supplied) (Exh. E. to Am. Pet.)." In their amended petition petitioners have deleted the word "individual" (Am. Pet. at 2). A housing development is not an individual customer. In any event, petitioners demonstrate knowledge of restricted status by the Village's letter of December 15, 1981 requesting a "waiver" for the sewer connection.

The Board has granted prior variances where the need for public housing has outweighed the adverse environmental impact of adding to the sewage load of the existing treatment facility. City of Herrin and Housing Authority of County of Williamson v. IEPA, PCB 83-169 (April 5, 1984); City of Abingdon and Knox County Housing Authority v. IEPA, 49 PCB 419 (PCB 80-163, February 5, 1981); St. Clair County Housing Authority, et al. v. IEPA, 39 PCB 285 (PCB 80-83, August 7, 1980). However, the petitioners in these cases had all started project planning before imposition of restricted status and were in jeopardy of losing federal assistance if variance was denied. Contra, see H.J. Bergmar Builders, Inc., et al. v. IEPA, 43 PCB 299 (PCB 81-67, September 3, 1981).

Herein, project planning was started approximately 6 years after restricted status was imposed. The record shows that the petitioners chose to proceed with construction after being informed that the apartment complex could not be hooked up to the WWTP until restricted status was lifted. To the extent there was a misunderstanding, there is no evidence in the record that petitioners attempted to clarify their understanding

of restricted status with the exception of a letter allegedly sent by the Village to the Agency in 1981. The Agency has no record of the letter (Agency Rec. at 5). The data from the DMRs and the Agency's observations suggest that bypassing of raw sewage has been occurring for years. The Agency permit authorizing construction of the sewer line specifically stated that the line could not be used until the receiving WWTP was upgraded (Id.). Lastly, there is no evidence of loss of federal assistance if variance is denied.

Noting that the variance request by petitioners is one for convenience, the Board finds that denial of the variance would not impose an arbitrary or unreasonable hardship where this convenience does not outweigh the adverse environmental effect of adding further discharge to an already overburdened WWTP. The hardship here is self-imposed.

Petitioners are not without relief as they may make full use of the apartment complex by installing the holding tanks suggested by the Agency prior to construction. Once the new WWTP is fully approved by the Agency, SSCA may apply for the requisite permits.

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

ORDER

Springfield and Sangamon County Community Action, Inc. and the Village of Williamsville, Illinois are hereby denied variance from 35 Ill. Adm. Code 309.241.

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 2nd day of August, 1984 by a vote of 6-0.

Dorothy M. Gunn
Dorothy M. Gunn, Clerk
Illinois Pollution Control Board