

ILLINOIS POLLUTION CONTROL BOARD
February 19, 1987

VILLAGE OF ELIZABETHTOWN,)
)
 Petitioner,)
)
 v.) PCB 86-158
)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

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

This matter comes before the Board upon a September 30, 1986 petition for variance, as amended on December 8, 1986, filed by the Village of Elizabethtown (Village). The Village seeks a variance for three years from 35 Ill. Adm. Code 312.101 which prohibits the operation of any treatment works unless its operation is under the supervision of a person certified to operate the particular type or size of the treatment works. The Illinois Environmental Protection Agency (Agency) filed its recommendation on December 1, 1986, advising that the variance be denied, and an Amended Recommendation, stating the same conclusion, accompanied by a motion to file instanter on February 9, 1987. The motion to file instanter is granted. On December 22, 1986, the Board received a letter from G.F. Tom, a resident of the Village, expressing concern over the operation of the Village's sewage treatment plant and alleging odor problems at the plant. No hearing was held.

The Village is located just north of the Ohio River in Hardin County. The Village owns and operates a contact stabilization activated sludge treatment plant (STP) with a design average flow of 0.06 million gallons per day (MGD). The plant discharges to the Ohio River. (Rec. 1).

The Village's STP is operated by Mr. Michael Milligan and Mr. Wendell Brownfield. Mr. Milligan is a certified Class 2 Operator who is under contract with the Village to operate its STP. Mr. Brownfield is a Certified Class 4 Operator who is under the direction of Mr. Milligan. Mr. Brownfield would be in charge of the operation of the STP should the Board grant the Village its requested relief. The Village asserts that it cannot afford to continue paying the salaries of Mr. Milligan and Mr. Brownfield and plans to have Mr. Brownfield obtain his Class 2 Certification in approximately three years. Therefore, the Village requests variance from Section 312.101 to allow the

operation of its STP by Mr. Brownfield, a Class 4 Operator, in lieu of Mr. Milligan, a Class 2 Operator.

Environmental Impact

The Villages STP operates pursuant to NPDES permit IL 0028690 with effluent limitations of 30 mg/l BOD, TSS as monthly averages. The Discharge Monitoring Reports submitted by the Village to the Agency indicates the following:

Month	Monthly Avg. BOD (mg/l)	Monthly Avg. TSS (mg/l)	Monthly Avg. (Flow (MGD))
Aug. 86	10	12	0.007
July 86	6.2	4	0.011
June 86	10	4	0.004
May 86	10	12	0.05
Apr. 86	32	52	0.037
Mar. 86	2	20	0.008
Feb. 86	18	28	0.022
Jan. 86	18	8	0.011
Dec. 85	4	16	0.015
Nov. 85	8.8	10	0.011
Oct. 85	13	15	0.024
Sept. 85	14	15	0.020

(Rec. 2-3).

The foregoing table indicates that the effluent from the Village's STP has been within its permitted limitations except for April, 1986. The Agency asserts that at current flow rates, the Village's STP has no discernible impact on the Ohio River. The Board agrees and concludes that the environmental impact of granting this variance would be minimal.

Hardship

The hardship issue is the crux of the Village's petition. The Village asserts that it cannot afford to continue to pay the salaries of Mr. Milligan and Mr. Brownfield totaling \$725 per month in addition to the other monthly expenses associated with operating the Village's STP. The Village also asserts that the consumer cannot afford any rate increase based on an average income of \$3,550 to 4,250. (Amended Pet. at 2). The Village's compliance plan is to have Mr. Brownfield obtain the proper certification as soon as possible. The Village asserts that this will take approximately three years. The Village is participating in the Agency's Operator Assistance Program funded under Section 104(g) of the Clean Water Act which provides hands-on training of operating personnel. (Rec. 4). In addition, the Village asserts that during the variance period Mr. Milligan will be available should problems arise. (Pet. at 1-2).

On the other hand, the Agency asserts that based on the facts presented, the cost to the users in the Village is below an amount the Agency would consider a hardship. (Amended Rec. at 3). The Agency basis this conclusion on the sewer cost as a percentage of 1979 median household income for the Village. In addition, the Agency asserts that a proper certified operator is there to insure that problems do not occur in the first place and that the proposed compliance is unacceptable.

Conclusion

The Village contends that it cannot continue to pay the salaries of the Class 2 operator and the Class 4 operator. The Village proposes that it either be granted variance for three years in order for its Class 4 Operator to obtain his Class 2 certification or be granted a variance for one year with the condition that the STP's operation be monitored during that time prior to renewal. In contrast, the Agency asserts that the Village can afford to pay both salaries, that the compliance plan is unacceptable given its uncertainties and that the purpose of providing a certified operator is to prevent violations by the facility before a remedy is necessary.

The Board concludes that denying the Village variance would impose an arbitrary of unreasonable hardship on the Village. The Village's STP, as currently operated, produces an effluent well within its permitted limitations and no evidence has been presented which would suggest that this pattern will not continue with the grant of variance. The Board sympathizes with the economic situation in the Village and will grant the Village variance from Section 312.101 for a period of three years, subject to conditions. A one year variance with continual renewals is unwarranted given the current operation of the Village's STP. The Board will require that Mr. Brownfield obtain his Class 2 certification within three years and continue to operate the Village's STP within permitted limitations where practicable. The Board will also require that the Village operate its STP so as to minimize the possibility that problems arise. Lastly, the Board will require that the Village continue to participate in the Agency's Operator Assistance Program.

As a final matter, the Board notes that during the variance period, Mr. Milligan, the Class 2 operator, has informally agreed to be available should problems arise.

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

ORDER

The Village of Elizabethtown, Hardin County, Illinois, is hereby granted variance from 35 Ill Adm. Code 312.101, subject to the following conditions:

1. Variance shall commence on February 19, 1987 and terminate on February 19, 1990 or when Mr. Wendell Brownfield obtains his Class 2 Operator Certification, whichever occurs first.
2. The Village shall continue participating in the Illinois Environmental Protection Agency's Operator Assistance Program.
3. The Village shall operate its sewage treatment plant so as to produce the best effluent practicable and to minimize the occurrence of problematic situations.
4. Within 45 days of the date of this Order, Petitioner shall execute and forward to the Illinois Environmental Protection Agency, Division of Water Pollution Control, 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

I, (We), the Village of Elizabethtown, having read the Order of the Illinois Pollution Control Board, in PCB 86-158, dated February 19, 1987, understand and accept the said Order, realizing that such acceptance renders all terms and conditions thereto binding and enforceable.

Petitioner

By: Authorized Agent

Agent

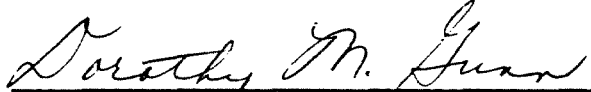
Date

IT IS SO ORDERED.

Board Member J. Marlin concurs.

Board Member R. Flemal dissents.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 19~~7~~ day of February, 1987 by a vote of 5-1.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board