ILLINOIS POLLUTION CONTROL BOARD
October 5, 1982

VILLAGE OF ASHLAND,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 82-1
	)	
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,	)	
	)	
Respondent.	)	

THOMAS R. APPLETON, PRESNEY, HUFFMAN, KELLEY & APPLETON, APPEARED ON BEHALF OF PETITIONER, AND

BRUCE L. CARLSON APPEARED ON BEHALF OF RESPONDENT.

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

This matter comes before the Board on the petition for variance of the Village of Ashland (Village), filed January 4, 1982 as amended February 23, 1982. The Village seeks a five-year variance from Rule 602(c) of Chapter 3: Water Pollution [since codified as 35 Ill. Adm. Code Title 35, Subtitle C, Chap. 1, Sec. 306.103(c)]. On March 25, 1982 the Illinois Environmental Protection Agency (Agency) filed its Recommendation opposing grant of variance. On May 6, 1982 a hearing was held at which no members of the public were present. The Village filed a closing brief on June 30, 1982, as did the Agency July 19, 1982.

The Village of Ashland, Cass County, owns and operates a wastewater treatment plant along with tributary combined and sanitary sewers, which serves its 1351 residents (550 water users). The Village is involved in an application for funding under the Construction Grants Program to a) install a separate sanitary sewer system, and b) to modify its existing sewage treatment plant, built in 1967, from a contact stabilization plant to a single stage aeration plant with tertiary filtration and chlorination. Present estimated costs for the entire project total $2,449,000, of which about $400,000 is attributable to plant improvements. The Village's 25% "local share" of this project would be about $724,400. The Village has received a commitment from the Farmers Home Administration (FmHA) for a loan at an interest rate of 5% for a 40-year term.

Essentially, the Village seeks variance to allow it to forgo construction of the $2,000,000 sanitary sewer line. It argues that the environmental impact of a variance would be

minimal, that denial of variance would impose an arbitrary or unreasonable hardship, and cites the pendency of the Board's review of Rule 602 in R81-17 as an additional reason for the Board to allow delay of sanitary sewer construction.

At hearing, Village President William Roth and consulting engineer Donald L. Damotte presented testiomny and exhibits on the Village's behalf. They explained that the Village currently has one sanitary sewer line, carrying flows directly to the sewage treatment plant (STP), which services 10 to 15% of the Village's residents (R. 27, 56). The flows to the other, combined sewer line, are the subject of this variance.

The Village's 1977 Facility Plan, prepared by the Village's prior consultant, David C. Loveland (Resp. Ex. 1), outlines the history of the Village's "sewer system". Runoff from approximately 1000 acres located north to northeast of the Village follows natural drainage patterns through the Village, discharging into the north fork of Little Indian Creek. (At hearing, however, there was testimony that drainage from 9 square miles flowed through the Village.) Beginning in 1930, drain tile segments began to be laid, to avoid flooding streets crossing the creek. From that time the drainage system, and its attendant problems, like Topsy "just grew".

The Facilities Plan characterizes the system as "a random patchwork with no discernable planned pattern". The main trunk-line was laid in a channel of the creek which once extended into the Village (Id. at 11, 8), but the system has been constructed piecemeal as the Village has grown. The various materials used include open-jointed field tiles (used up until the mid-1960's), bell and spigot clay tile, concrete sewer pipe, and ABS truss pipe (Resp. Ex. 1, p. 11, R. 35-36). Some drainage segments were installed by individual landowners, and others by the Village, which ignored "legal niceties" such as easements, etc. Many segments were buried only a few feet under the ground; "it is not unusual after a heavy rain storm for the Village to experience cave-ins caused by failure of a section of the drainage tile system (Id. p. 13).

At some places within the Village itself, flow is transported through open ditches (R. 38-39). At the west side of the Village, the system reaches a 60-inch diameter pipe with outlet to a tributary of Little Indian Creek.

A diversion structure in the pipe, about 8-10 inches high, diverts flows to a lift station, which pumps them to the STP. The STP can treat a design average flow of 150,000 gpd; excess flows go to a primary lagoon for settling and eventual discharge into Little Indian Creek. Actual flows received by the STP have not been recorded "over the last few years" because of an inoperable flow meter (R. 36, 38-39, 40, 49-50).

Flows passing over the diversion structure discharge into an unnamed tributary of Little Indian Creek in an open area bordered by homes and some agricultural land, "virtually in the...Village". Overflows occur in all but the driest months (R. 47, 62, 69).

While the drainage system was intended to carry only storm water, at some time it became a "combined sewer". As expressed in the Facilities Plan,

> "Because of ...indigenous soil factors, septic tanks were contraindicated. However, they were nonetheless installed. Septic tank drainage fields were eminently unsuccessful. A noisome nuisance was created by unabsorbed septic water rising to the surface and collecting in stagnant pools in yards, roadside ditches, hollows, and depressions in the land. In an attempt to remedy the situation, the residents started connecting the septic tank outflows into the drain tile system. This abated the immediate residential problem but created a greater environmental evil.
>
> ...The overflow from the drainage system, (which contains only liquid septic tank drainage) causes the same noisome problems that were individually created before connection to the drain tile system. Now, instead of being dispersed as previously, it is in one concentrated area. Odor and a myriad of attendant public health problems proliferate. Not the least of these problems is insect control. Rapid growth of vegetation in the outfall area makes insect abatement programs futile" (Resp. Ex. 1 at 9).

Because of the chronic overflows from the drainage system, the Agency imposed restricted status on December 6, 1976, which continues in effect (Resp. Ex. 2, R. 24-26).

From the overflow location, the Creek's unnamed tributary travels for about 150 feet, passes through a culvert, and runs about 300 feet before joining another tributary. The combined tributaries flow downstream past the STP. The STP discharges into them at a location about one-quarter mile downstream of the overflow point (R. 71-72).

Each of the Village's witnesses presented testimony relating to the environmental impact of the untreated overflows on the receiving tributary. Village President Roth, a nearly life-long Ashland resident, testified that he had seen varying degrees of algae present in the stream since the 1940's. He never observed fish "because a lot of times [the stream] didn't have any water in it". Mr. Roth testified that he had never heard of any human or animal health problems arising from the Village's drainage system (R. 8, 17).

Engineer Damotte testified that the overflow smelled "at times". He too observed algal growth near the diversion structure. Mr. Damotte testified that on the one occasion he had observed the stream about three-eighths of a mile downstream, he saw no unusual growths or deposits (R. 39, 46-47).

The Agency presented four witnesses, three of whom spoke to the environmental impact issue. William Tucker presented testimony concerning the importance of the aquatic life activity occurring in intermittent streams (such as Little Indian Creek) to the life in larger downstream waters, and the detrimental effects of even small quantities of conventional pollutants in a small stream with a low dilution factor. Mr. Tucker's conclusions were based on a study he prepared after study of six intermittent streams, none of which were the Little Indian Creek (R. 73, 88).

Toby Frevert and Charles Brutlag spoke of their field observations of Little Indian Creek. Mr. Frevert testified that on a visit made in the summer, 1974, he inspected the creek center from the lift station and overflow points, and for about one quarter to one half mile downstream. He noted organic sludge deposits related to sanitary sewage in the creek bed, and a high concentration of filamentic algal growth in the immediate vicinity of the overflow point and lesser quantities downstream. In Mr. Frevert's opinion, the sewage discharge provided the organic enrichment causing and contributing to the growth of this material.

Mr. Brutlag testified concerning conditions he observed in March, 1982. At the overflow point itself, a sewage odor was noted. About 150 feet downstream the stream bed was covered with black sludge deposits and filamentous growth; similar conditions were observed for about 300 feet downstream (R. 69, 71).

Each of the Village's witnesses addressed its economic hardship argument. As a result of a survey of its residents conducted in connection with an HUD grant application, the Village has determined that 48% of the households within it have household incomes of less than $13,600 (many of these householders being retirees) (Pet. 2, R. 15, 32). To finance the aforementioned $724,400 25% local share for sanitary sewer construction, even as based on the FmHA 5% interest figure, the Village calculates that its annual sewer expense will be increased from about $47,500 to $93,940.

Water users--commercial and residential alike--are currently charged a flat sewer charge of $3.50 per month. As part of its Facilities Plan, the Village discussed the rate increases needed to finance improvements. The proposed rate structure would be tied to water usage, with $1.95 to be the monthly service charge and the service rate to be $2.85 per

1000 gallons. The Village alleges that the minimum monthly bill would thus be $4.80, and the average monthly bill would be $12.50 (based on use of 3700 gallons per month). The Village argues that payment of this additional $9.00 per month would impose an arbitrary or unreasonable hardship, particularly in light of the fact that each household would also be forced to pay a one-time $400 charge for a sewer hook-up from the household to a sanitary sewer (Resp. Ex. 3, R. 54-56).

The Agency does not dispute the fact that sewer charges would increase. It notes, however, that according to the Village's own figures, 28.2% of its customers use less than 1000 gallons per month, with 20% using between 1,000 - 2,000 gallons, and an additional 16.9% using between 2,000 - 3,000. Fully 65.1% of the water customers would thus be paying less than the "average" projected bill of $12.50 per month. The Agency suggests that after transition to a graduated system, that many users might also have an incentive to reduce the amount of any increase by implementation of water-saving devices and practices. Further, as to the $400 sewer connection fee, the Agency suggests that this might be offset by savings in septic tank maintenance, since tanks would be rendered obsolete.

Even assuming the correctness of the Village's higher figures, the Agency argues that these costs do not constitute an arbitrary or unreasonable hardship, particularly as balanced against the evidence of environmental harm. The Agency submits that grant of variance could ultimately lead to imposition of greater costs at a later time. Construction costs would rise with inflation, and the interest rate for financing the local share would probably be less favorable later--even now, new FmHA loan applications are subject to interest rates of 12.375% (R. 29).

Finally, the Village argues that the pendancy of the R81-17 proceeding justifies grant of variance relief, as the Village believes "it will in fact fall within the exceptions to Rule 602 (sic) provided by said proposed amendment" (Brief at 4). The Agency counterargues that even if Rule 602 were modified as proposed, that the Village would be required to make a demonstration justifying the exception, based upon analysis of water quality effects, stream uses, and control strategy alternatives, as well as economic considerations. As the Village has not here presented a compliance plan, the Agency suggests that variance should not be granted solely on the basis of speculation as to the ultimate availability of regulatory relief, citing Village of Sauget et al. v. IEPA, PCB 80-176, April 16, 1981.

The Board finds that the Village has failed to prove that denial of variance would impose an arbitrary or unreasonable hardship. In its own Facilities Plan, the Village has "admitted" to the potential public health problems, actual environmental

problems, and actual economic problems which result from maintenance of the status quo, all of which have been amply demonstrated by the testimony presented to the Board.

The Board concurs that

> "There does not appear to be any alternatives [sic] to the development of a sanitary waste collection system. The soils of the area preclude the return to septic tanks with attendant seepage fields.
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> ... The implications of a "no action" plan would, under the current restrictions placed on the Village by the Illinois EPA, mean the abandonment of any planned construction with resulting economic loss. Such a "no action" plan would, in all probability, lead to increased pollution of Indian Creek, as electric cost and maintenance costs increase beyond the realistic ability of the Village to pay for the continual use of an inefficient treatment facility" (Resp. Ex. 1 at 14).

Perhaps more importantly, the Board cannot condone continued operation in any part of the Village of what amounts to "open sewers". Under any modification to Rule 602, the Village would bear a heavy, if not nearly insurmountable, burden of persuading the Board that combined sewer overflow control strategy alternatives to construction of a sanitary sewer system would adequately and cost efficiently address the Village's multiple problems. Variance is denied.

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

ORDER

Petitioner, the Village of Ashland, is hereby denied variance from Rule 602(c) of Chapter 3: Water Pollution [35 Ill. Adm. Code, §306.103(c)].

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 14th day of October, 1982 by a vote of 5-0.

Christan L. Moffett, Clerk
Illinois Pollution Control Board