ILLINOIS POLLUTION CONTROL BOARD
July 22, 1976

CITY OF DECATUR AND SANITARY DISTRICT OF DECATUR, Petitioners,	)	
v.	)	PCB 76-2
ENVIRONMENTAL PROTECTION AGENCY, Respondent.	)	

Mr. Gus Greanias, of Greanias & Burton, appeared on behalf of the City of Decatur
Mr. Joseph Svoboda appeared on behalf of the Environmental Protection Agency

OPINION AND ORDER OF THE BOARD (by Mr. Goodman):

This matter comes before the Pollution Control Board (Board) upon the Petition filed by the City of Decatur (City) and the Sanitary District of Decatur (District) on January 5, 1976, appealing from a permit denial or, in the alternative, requesting a variance. The Agency filed its Answer to Permit Appeal and Recommendation on March 8, 1976. A hearing was held in this matter on April 29, 1976 in Decatur, Illinois.

On March 20, 1975, Decatur filed an application with the Environmental Protection Agency (Agency) for a permit to construct a proposed McKinley Avenue Diversion Control Facility. On April 17, 1975, the Agency denied the permit on the basis that the proposed facility would not comply with Sections 12 and 39 of the Environmental Protection Act (Act). Specifically, the Agency found that the proposal would violate Rule 602(c)(2) of the Board's Water Pollution Regulations (Chapter 2). Decatur requested review of its submittal, and on May 19, 1975, the application was redenied. In its May 19, 1975, letter, the Agency based its redenial upon Rule 602(c)(2) as well as upon Rule 602(a), which prohibits the installation of new combined sewers except where sufficient retention or treatment is provided.

The City has jurisdiction over the combined, lateral and storm water sewers, and the District has jurisdiction over the interceptor sewers and treatment plant serving the Decatur community. Petitioners' facilities include a 42-inch North Side Interceptor which serves an interceptor chamber receiving flow from the 72-inch McKinley Avenue combined sewer. A 48-inch Stevens Creek Interceptor receives flow from the North Side Interceptor as well as from a 30-inch North Stevens Creek Interceptor.

In 1974, the Agency informed the City that it had received complaints of basement sewer back-ups from occupants of five homes connected to the Stevens Creek Interceptor. Investigation revealed that all five homes had basement floors which were built below or only a few inches above the crown of the interceptor. Furthermore, the Agency informed the District that the Stevens Creek Interceptor, which serves 1/3 of the Decatur community, was being placed on Critical Review Status.

Engineers engaged by the Petitioners agreed that one cause of the basement back-ups was the surcharging of the Interceptor serving the homes. According to Petitioners, this surcharging was the result of an existing diversion structure permitting excess flow from the 72-inch combined sewer into the 42-inch North Side Interceptor during exceptionally high storm periods. In order to alleviate the problem, Petitioners proposed to construct a new diversion facility upstream from the existing diversion structure which would limit the flow into the North Side Interceptor to 3 1/2 times dry weather flow. The new diversion structure would be constructed upstream in order to obtain a gravity flow condition where the sewer is not surcharged so that the flow may be measured through a Parshall flume (R.22). One of the Agency's witnesses testified that the proposed diversion facility would consist of a new concrete structure on the existing combined sewer, including twenty feet of new sewers and a new control structure with approximately eighty feet of sewer tributary to the Parshall flume (R.112). Any excess flow over 3 1/2 times the dry weather flow would overflow into Spring Creek, which is tributary to Stevens Creek and eventually to the Sangamon River. The discharge to Spring Creek, therefore, would be diluted sewage from a combined sewer.

Permit Appeal

The issues raised by Petitioners on appeal are: 1) Is the proposed facility a new combined sewer and, therefore, subject to Rule 602(a), and 2) Did the Agency have the authority to deny the permit application based upon Rule 602(c)(2) when compliance with that Rule was not required, pursuant to Rule 602(d), until 7 1/2 months after the permit denial?

Rule 602(a) provides that:

"the installation of new combined sewers is prohibited, except where sufficient retention or treatment capacity is provided to ensure that no violation of the effluent standards in Part IV of this Chapter occurs."

Rule 602(c)(2) provides:

(c) All combined sewer overflows and treatment plant bypasses shall be given sufficient treatment to prevent pollution or the violation of applicable water quality standards. Sufficient treatment shall consist of the following:

(2) Additional flows, as determined by the Agency but not less than ten times the average dry weather flow for the design year, shall receive a minimum of primary treatment and disinfection with adequate retention time;

Rule 602(d) states that compliance with Rule 602(c) is to be achieved by December 31, 1975.

As to the first issue, Petitioners argue that the proposed diversion facility would not involve construction of new combined sewers because no additional flow would be introduced into the system, no new sewer was involved, and no new diversions were being made into Stevens Creek by the diversion. Petitioners contend that the proposal would merely be the modification of an existing diversion structure rather than the construction of a new combined sewer.

The Agency, on the other hand, points out that the proposal will involve construction of a new stretch of connecting sewer which is to receive combined sewage from the McKinley Avenue combined sewer. Therefore, the new stretch of sewer is, according to the Agency, necessarily a new combined sewer.

The Board agrees with the Agency's contention. Rule 104 of the Water Regulations defines combined sewer as "a sewer receiving both wastewater and land run-off." The new sewer which would be a part of the proposed diversion facilities is specifically intended to receive wastewater and land run-off from the McKinley Avenue combined sewer and is, therefore, a new combined sewer. Because

Petitioners' proposal did not provide for sufficient retention and treatment capacity to ensure that no violation of the effluent standards would occur, as required by Rule 602(a), the Agency was correct in denying the permit on the basis of that Rule.

We next consider Petitioners' contention that the Agency lacked authority to deny the permit on the basis of Rule 602(c)(2) because compliance with that regulation was not required until a date seven months in the future. We reject this argument. Petitioners submitted no plan for treating 10 times the dry weather flow for the combined sewer overflow from this diversion structure. Without a program to be implemented in a reasonable amount of time, no treatment could possibly have been provided for this diversion's combined sewer overflow. The Agency was correct in denying a permit for construction of facilities which inevitably would result in a violation of the Board's Regulations.

The only issues relevant on appeal from denial of a permit are those related to whether the Agency correctly interpreted and administered the regulations when it denied Petitioners' permit application. Because the proposed facilities would have violated Rules 602(a) and 602(c)(2), the Agency was prohibited by Sections 12 and 39 of the Act from granting the requested permit. The Board finds that the Agency did correctly administer and interpret the Regulations and, therefore, upholds the permit denial.

Variance

The Board next considers Petitioners' request for variance in order to permit issuance of the requested permit. Petitioners are faced with a Critical Review Status for an interceptor serving 1/3 of their community and with basement sewer back-ups. They have proposed a plan which they feel will help alleviate the immediate problem and have expended engineering costs in arriving at their proposal.

Furthermore, the City has commenced a fifty-four million dollar storm water improvement and the District is in the final stages of an eleven million dollar plant improvement. Petitioners are also in the process of preparing an Area Facilities Plan jointly with two neighboring villages, which will be completed in December, 1976. Petitioners' Reply Brief indicates that the Area Facilities Plan will include an Infiltration and Inflow Study and recommendations for treatment of all diversion outlets in the area. Petitioners state that they are committed to full compliance with the Act at the earliest possible date their financial ability will permit.

The Agency has recognized the fact that many municipalities and sanitary districts throughout the State have not met and cannot presently meet the December 31, 1975 compliance date. On December 22, 1975, the Agency filed an Amended Petition for Regulatory Change (R75-15) with the Board specifically requesting that the date for complying with Rule 602(d)(3) be extended until July 1, 1977, provided a grant application had been filed before December 31, 1975. The Board has not yet taken final action on this proposal, although it has published a proposed final draft adopting the substance of the Agency's proposal.

The Board finds that denial of the variance in the present case would impose an arbitrary and unreasonable hardship upon Petitioners. Therefore, Petitioners are granted variance from Rules 602(a) and 602(d)(3), the compliance date for Rule 602(c)(2) for the proposed McKinley Avenue diversion facilities. The Board finds no need to grant a variance from the permit requirement itself because Rule 962(a) of the Water Regulations provides for the granting of a permit to applicants who have received a variance from the Board.

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

ORDER

It is the Order of the Pollution Control Board that:

1. The denial by the Agency of the application submitted by the City of Decatur and the Sanitary District of Decatur for a permit to construct a McKinley Avenue Diversion Control facility is affirmed.

2. The Sanitary District of Decatur and the City of Decatur are granted variance from Rule 602(a) and from the compliance date for Rule 602(c)(2)(combined sewer overflows) as established by Rule 602(d)(3) of Chapter 3 for the proposed McKinley Avenue diversion facilities. Such variance is granted until July 1, 1977, or until the Board adopts an amendment to the Regulations in consideration of the Agency's Regulatory Proposal (R75-15), whichever is sooner.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 22ND day of July, 1976 by a vote of 5-0.

Christan L. Moffett, Clerk
Illinois Pollution Control Board