

ILLINOIS POLLUTION CONTROL BOARD  
November 15, 1979

NADELHOFFER-WILSON and )  
ASSOCIATES (Oak Hill Estates), )  
 )  
Petitioner, )  
 )  
v. ) PCB 79-193  
 )  
ENVIRONMENTAL PROTECTION AGENCY, )  
 )  
Respondent. )

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

Petitioner Nadelhoffer-Wilson and Associates (Nadelhoffer) has requested a variance to construct and connect sewer lines from thirteen homesites and connect them with the DuPage County Department of Public Works (DPCDPW) Lisle-Woodridge sewage treatment plant that is presently on restricted status. The Board construes this request as seeking a variance from Rule 962 (a) of Chapter 3: Water Pollution Control Rules and Regulations (Water Rules). Petitioner has waived a hearing in this matter. The Agency has recommended that the variance be denied.

Petitioner has executed an agreement to purchase a subdivision in Woodridge, Illinois as a site for construction of thirteen single family homes. Under this agreement Nadelhoffer is obligated to complete proposed improvements, including sewer connections, by December 31, 1979. Petitioner states that the Agency is precluded from granting permits for construction and operation of a sewer connection that directs flow to a sewage treatment plant on restricted status. Petitioner, therefore, asserts that it cannot honor its contractual obligations without a variance allowing the issuance of the required permits. Nadelhoffer further claims that it and the seller of the subdivision, who were both unaware of the treatment plant's restricted status during negotiations, will suffer arbitrary and unreasonable hardship if a variance is not granted.

In Corporate West Development, Inc. and County of DuPage v. EPA, PCB 79-163 (Oct. 4, 1979), a variance was granted to connect sewer lines that directed flow into the Lisle-Woodridge sewage treatment plant upon proof that a hotel construction contract was executed prior to the declaration by the Agency of the plant's restricted status. In the present case, however, Petitioner fails to offer sufficient proof that it was unaware of the plant's restricted status when it executed the purchase contract. The dates these agreements were executed are not stated in the petition. On

April 25, 1979 the DPDPW was notified that restricted status was pending and on May 31, 1979 DPDPW was notified that restricted status was pending and on May 31, 1979 DPDPW was notified that its sewage treatment plant was on restricted status. Nadelhoffer, in a cover letter to its variance petition, merely states that it had been negotiating prior to the date that restricted status was declared and that it did not learn of Lisle-Woodridge's restricted status until mid-June 1979. Without knowledge of the date that the contract and the subsequent extension were executed, there is no way that the Board can determine whether or not Petitioner's hardship is self-imposed. Furthermore, Nadelhoffer does not demonstrate that it made diligent inquiries into the status of the plant other than checking local newspapers. The Board cannot tell whether the Petitioner contacted the DPDPW or the Agency prior to entering into its purchase agreement.

Nadelhoffer also argues that construction and operation of the sewer connections will not result in additional environmental harm. Petitioner claims that it was granted permits for sewer connections for 314 homesites in three other subdivisions in the area before the Lisle-Woodridge treatment plant was placed on restricted status. Nadelhoffer asserts that it will not install all 314 connections prior to the time that Lisle-Woodridge treatment plant improvements are scheduled for completion (Sept. 15, 1980) and that far more than 13 permitted connections will remain unconnected at the time treatment plant improvements are completed. Petitioner, therefore, insists that environmental harm will not exceed that which was anticipated when the original 314 permits were granted.

Nadelhoffer, however, does not state whether the 314 permits were granted by the Agency or by a municipality or the dates on which permits were granted. Under Rules 951 and 952 of the Board's Water Rules, permits for construction and operation of a sewer connection must be granted by the Agency. Because the Petitioner fails to name the other three subdivisions for which permits were allegedly granted, there is no way that the Agency or the Board can determine whether the proper Agency permits were granted prior to the sewer connection ban.

Nadelhoffer has not offered information sufficient to prove that unreasonable hardship will result if a variance is not granted or that it will not contribute to environmental harm if the Board allows permits to be issued. With the information presented, the Board cannot determine that hardship was not self-imposed. The Board, therefore, denies Nadelhoffer-Wilson and Associates' request for variance relief.

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

ORDER

The Board hereby denies Petitioner Nadelhoffer Wilson and Associates a variance from Rule 962(a) of Chapter 3: Water Pollution.

IT IS SO ORDERED.

Mr. Werner dissents.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 15<sup>th</sup> day of November, 1979 by a vote of 3-1.

  
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Christan L. Moffett, Clerk  
Illinois Pollution Control Board