

ILLINOIS POLLUTION CONTROL BOARD
May 29, 1980

PULTE HOME CORPORATION, ILLINOIS)
DIVISION,)
)
Petitioner,)
)
v.) PCB 80-50
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

ORDER OF THE BOARD (by I. Goodman):

The Agency's May 8, 1980 Motion for Modification of the May 1, 1980 Order dismissing this matter is granted insofar as it seeks clarification of that Order.

First, although the Order did not discuss the sufficiency of Pulte's plea of arbitrary or unreasonable hardship, the Order implies that Pulte's prior knowledge of the restricted status negates the imposition of any arbitrary or unreasonable hardship.

Secondly, the precise relief requested was from the effect of the Agency's determination of restricted status. Had Pulte pleaded that the effect of that determination worked a hardship the variance petition may have been sufficient.

The central issue in cases such as these is whether the Illinois Environmental Protection Agency may issue permits to connect to a system on restricted status without the Board's permission in the form of Rule 962(a) "variances". However, the "variance" referenced in Rule 962(a) does not refer to a right to connect to a system on restricted status. It refers to such situations where a permittee's construction or operation, if a permit is issued, could cause violations of the Act or the Board's regulations.

The Agency's reference in its motion to a variance's enabling the Agency to "disregard" a restricted status in reviewing permit applications is contrary to Rule 604(b) where no connection permits may issue upon the determination of restricted status. A variance from Rule 604(b) may alone not be sufficient to prove to the Agency that there will be no violations of the Act or of the Board's regulations. Thus, even with a variance from Rule 604(b) a connection permit may be denied by the Agency.

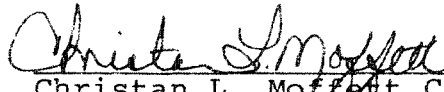
A petition for variance from Rule 962(a) as it concerns the imposition of restricted status pursuant to Rule 604(b) and as it operates to deny issuance of connection permits cannot properly allege that it is an arbitrary or unreasonable hardship for Petitioner to prove its connection will not cause a violation of the Act or of the Board's regulations because Rule 604(b) precludes Petitioner from proving such nonviolation.

The arbitrary and unreasonable hardship which needs to be shown when connection permits are denied by the Agency is not that Petitioner is unable to prove no violation, but rather that the determination of restricted status itself works such a hardship on Petitioner. The Board is presently considering changes in the procedures used for this type of petition which will address this and other problems associated with restricted statuses.

As stated in the Order of May 1, 1980, the case of a permit denial appeal was not before the Board.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 29th day of May, 1980 by a vote of 4-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board