

ILLINOIS POLLUTION CONTROL BOARD
May 14, 1981

CITY OF CASEY,)
)
) Petitioner,)
)
) v.) PCB 81-16
)
 ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,)
)
) Respondent.)

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

This matter comes before the Board on the petition for variance of the City of Casey (City), filed February 4, 1981 and amended February 25, 1981. The City seeks "permanent" variance from the effluent standard of Rule 405 of Chapter 3: Water Pollution, which limits the fecal coliform count to 400 per 100 ml of effluent, thereby requiring dischargers to disinfect effluent with chlorine. As Section 36(b) of the Environmental Protection Act authorizes grant of variance only for a five year period, the Board will construe the petition as requesting variance for that period. The Illinois Environmental Protection Agency (Agency) supports grant of variance in its Recommendation filed April 1, 1981 (along with a motion to file instanter, which is hereby granted). Hearing was waived and none has been held.

The City of Casey, located in Clark County, currently owns and operates two wastewater treatment plants serving the needs of an agriculturally-oriented community of about 3,000. However, these plants are to be abandoned upon completion on or about June, 1981 of a new wastewater treatment plant costing some \$1,800,000, financed in part by the construction grants program. Chlorination facilities have been constructed in the new plant. The City seeks variance to avoid the annual operation and maintenance costs of the use of the chlorination facilities, which are estimated by the City to be \$17,055 (Pet. 1,3).

The City states that elimination of chlorination of effluent would have no adverse environmental impact, and reminds the Board of the Agency's R77-12, Docket D proposal that the requirement be deleted. The City believes that the required chlorination will impose arbitrary or unreasonable economic hardship on the 1338 users of its sewage service. The monthly user fee if chlorination is not required would be \$9.54; chlorination would raise costs by \$1.06 per month for a total monthly charge of \$10.60. As in 1970 9.8% of the City's families had a median income below the poverty

level, and given Clark County's low estimated 1980 median income of \$15,400, the City argues that imposition of the additional yearly cost of \$12.72 for chlorination is unwarranted.

The Agency, in its Recommendation, supports the City's claim that it would not otherwise be required to chlorinate if the Agency's R77-12, Docket D proposal were adopted by the Board as written. This is because a) the City is not within 20 miles upstream of either a public bathing beach or a water intake used for a public or food processing water supply and b) the City's discharge would not cause violation of water quality standards in another state, since the Wabash River, into which the City discharges by way of the Embarrass River, is 75 miles downstream from the City's discharge location. After discussing the merits of its proposal, the Agency recommends grant of variance for 5 years or until deletion of the chlorination requirement, whichever first occurs. The Agency did not address the City's hardship claims.

The Board finds that the City has failed to prove that denial of variance would impose an arbitrary or unreasonable hardship. Even accepting the City's O & M estimate of \$17,055 as its actual annual cost, the costs of using the already-installed chlorination equipment is low.

If, on the other hand, the \$10,840 "equipment replacement" figure reflects the annual amount of depreciation on the already installed equipment, this "sunk cost" would not be reduced by grant of variance. The annual, controllable (i.e. savable) chlorination costs would therefore be \$6,205. While the Board understands the Agency's advocacy of its R77-12 proposal, the Board cannot lawfully prejudge the outcome of a pending regulatory proposal in considering a petition for variance. Variance is therefore denied.

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

ORDER

The City of Casey is hereby denied variance from Rule 405 of Chapter 3: Water Pollution.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order were adopted on the 14th day of May, 1981 by a vote of 5-0.


 Christan L. Moffett, Clerk
 Illinois Pollution Control Board