

ILLINOIS POLLUTION CONTROL BOARD
June 18, 1976

CITY OF OGLESBY AND JANKO)
BUILDING COMPANY,)
)
Petitioner,)
)
v.) PCB 76-97
)
ENVIRONMENTAL PROTECTION AGENCY,)
)
Respondent.)

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

This matter comes before the Board on the variance petition filed April 12, 1976 by the City of Oglesby and the Janko Building Company seeking relief from Rule 602(d)(3) of Chapter 3: Water Pollution Rules and Regulations. An Agency Recommendation was filed with the Board on May 21, 1976.

Rule 602(d)(3) establishes a compliance date of December 31, 1975 for Rule 602(c), which requires in part that all combined sewer overflows shall be given sufficient treatment to prevent pollution or a violation of applicable water quality standards.

The City of Oglesby presently operates a combined sewer system with a treatment plant bypass and combined sewer overflows. Because the City of Oglesby is presently not in compliance with Rule 602(d)(3), the Agency denied Janko a permit for the construction of a sewer extension to a proposed industrial park. Petitioners allege they will suffer an unreasonable hardship if the variance request is denied because new industry will not be able to locate in the area.

Petitioners allege that the grant of this variance will not result in any immediate, additional use of the Oglesby sewer system, since each individual industrial discharger which locates within the industrial park will still be required to apply for and obtain an individual Agency construction permit. Therefore, even if the present variance is granted allowing the construction of the sewer extension, industrial users will still be obliged to obtain connection permits, and Agency denial might be predicated on violation of rules other than Rule 602(d)(3). This permit process will ensure that all other Rules and Regulations are complied with, except for the treatment of combined sewer overflows.

In January the City of Oglesby was informed by the Agency that state grant assistance is available for the completion of Step I facilities planning and the City has submitted an application to receive those funds. The City has been reluctant to proceed with the sewer and treatment plant improvement projects in the absence of State authorization because it would be precluded from any reimbursement from State/Federal grant funds if they were to proceed in advance of a grant award.

The Agency has recognized the fact many municipalities and sanitary districts throughout the State have not met and cannot presently meet the December 31, 1975 compliance date as set by Rule 602(d)(3). 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. Although the Board has not taken final action on this proposal, at its May 20, 1976 meeting, the Board authorized for publication a proposed final draft of the Rule change which would adopt the substance of the Agency's amendatory proposal. The economic impact hearings have yet to be conducted in this matter.

In view of the foregoing, the Board is disposed to grant the City of Oglesby the relief requested. We believe an arbitrary and unreasonable hardship would be placed on the City by requiring the massive capital outlays necessary for compliance without first allowing the City to obtain assistance from existing grant programs (The Clinton Sanitary District, PCB 75-498; The Sanitary District of Elgin, PCB 75-501).

The Agency submits, and the Board agrees, that it will not be necessary to grant Janko a variance from Rule 602(d)(3). The grant of relief to the City is sufficient for both parties, although Janko will have to reactivate or resubmit its permit application.

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

ORDER

1. The City of Oglesby is granted variance from the compliance date for combined sewer overflows as established by Rule 602(d)(3) of the Water Pollution Rules and Regulations. Such variance is granted until July 1, 1977, or until the Board adopts an Amendment to the Regulations in consideration of the Agency Regulatory Proposal (R75-15), whichever is later.


2. The City is required during this period to maintain optimum operating efficiency and convey as much combined sewer flow to its plant for treatment as is possible.

3. This variance will immediately terminate if the City is offered a grant during this period and the City does not respond with appropriate action to bring it into compliance.

4. The Janko Building Company's petition for variance from Rule 602(d)(3) is hereby dismissed.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 18th day of June, 1976 by a vote of 5-0.


Christan L. Moffett, Clerk
Illinois Pollution Control Board