

ILLINOIS POLLUTION CONTROL BOARD

February 4, 1982

CORPORATE WEST, INC., )  
 )  
 ) Petitioner, )  
 )  
 ) v. ) PCB 81-174  
 )  
 ) ILLINOIS ENVIRONMENTAL PROTECTION )  
 ) AGENCY, THE COUNTY OF DUPAGE, )  
 ) AND VILLAGE OF Lisle, )  
 )  
 ) Respondent. )

OPINION OF THE BOARD (by J.D. Dumelle):

This Opinion supports the January 21, 1982 Order of the Board in this matter. On November 4, 1981 Corporate West, Inc. filed a petition for variance from Rules 203 and 405 of Chapter 3: Water Pollution, for the duration of R77-12 (Docket D): Effluent Disinfection, plus sixty days. On December 24, 1981, the Illinois Environmental Protection Agency (Agency) filed a recommendation to grant the requested relief, and on December 31, 1981 Corporate West filed a response alleging certain inaccuracies therein which are not of substantial importance to the Board's decision in this matter (and which are unsworn in any case). Hearing was properly waived, and none was held.

On August 7, 1980 the Board in PCB 80-96, granted Corporate West, et al., a variance to allow the construction of a temporary wastewater treatment plant in DuPage County. This plant will serve in addition to Corporate West, Ace Hardware Corporation and Western Electric, and will off load 32,000 gallons per day of sewage from the DuPage County sewage treatment system (this figure is alleged in the Agency's recommendation, but based upon other figures, it is probably 320,000 gallons per day).

This temporary plant is designed to treat an average flow of 0.325 MGD (million gallons per day), design P.E. of 3,250, and a maximum flow of 0.65 MGD. The treatment plant consists of 2 lift stations and duplicate package plants each of which contain an extended aeration process, second stage clarification, high rate sand filters, and aerobic digestion. The effluent from this plant will be discharged to Rott Creek, a tributary of the East Branch of the DuPage River. This facility has been completed except for the disinfection equipment that Corporate West has delayed installing pending the outcome of the proposed regulatory change in R77-12 (Docket D).

Corporate West was issued NPDES Permit No. IL006227 on May 17, 1981, which expires on August 7, 1984. According to this permit fecal coliform levels are not to exceed 400/100 ml.

Pursuant to Condition C of the Board's August 7, 1981 Order the facility must be transferred to the DuPage County Department of Public Works (DCDPW). However, Corporate West has been advised by DCDPW that DCDPW will not accept transfer of ownership of its interim treatment facility, nor subcontract its operation under Condition D of the Board's Order, because the interim treatment facility does not have the exact chlorination treatment specified in the Construction Permit and the design specifications. As a result, Corporate West's interim treatment facility is completed and ready to operate, but cannot be operated nor its ownership transferred to DCDPW in compliance with Conditions C & D of the Board's Order without DCDPW's cooperation.

Thus, in order for Corporate West to comply with the August 7 Order, it must either install disinfection equipment or obtain the variance relief requested. Corporate West alleges that permanent disinfection facilities will cost \$30,000 and that expenditure of those funds constitutes an arbitrary and unreasonable hardship in that a decision to adopt the proposed rule in R77-12 will make that expenditure unnecessary.

The Agency's sole disagreement with these allegations is that according to U.S. Geological Survey topographic maps, there is a body of water, approximately one acre in size, three miles downstream of Corporate West's point of discharge to Rott Creek. Thus, the Agency argues that Corporate West may be required to disinfect its effluent under proposed Section 304.121(d). However, the exact nature of that body of water is not known, and the Board has not defined the meaning of "lake" as opposed to other lentic habitats. Thus, the Agency concludes that variance should be granted in light of the minimal environmental impact the discharge will have. This assessment of the environmental impact is based upon the Agency's testimony in R77-12.

While the record does not disclose the cost of interim disinfection facilities, any such expense may be rendered unnecessary under the Board's final Order in R77-12 (Docket D). In this situation, where facilities are not in place to meet Board rules and a decision on the rule, which may exempt Corporate West from compliance with that rule, is expected within a reasonably short period of time subsequent to the filing of the variance petition, the Board finds that denial of variance would constitute an arbitrary and unreasonable hardship. This situation is to be distinguished from that of City of LaSalle v. IEPA, PCB 81-152 (January 21, 1982) where complying chlorination facilities were already in place, and where the hardship alleged did not result from the rule under consideration.

However, the Board will impose a potentially stricter time limitation upon the variance than was requested. If the variance has not otherwise expired, it shall expire, since it will be unnecessary, upon Corporate West's connection to the Woodridge-Green Valley wastewater treatment plant (which is ultimately required under the Board's August 7 Order).

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

Mr. Anderson dissented.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion was adopted on the 4<sup>th</sup> day of February, 1982 by a vote of 3-1.

  
Christan L. Moffett, Clerk  
Illinois Pollution Control Board