

ILLINOIS POLLUTION CONTROL BOARD
March 11, 1976

THE SANITARY DISTRICT OF ELGIN,)
)
 Petitioner,)
)
 v.) PCB 75-501
)
ENVIRONMENTAL PROTECTION AGENCY,)
)
 Respondent.)

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

This matter comes before the Board upon the variance petition filed December 29, 1975 by Sanitary District of Elgin (District) seeking relief from Rule 602(d)(3) of the Water Pollution Rules and Regulations (Rules). An Agency Recommendation was filed with the Board on February 9, 1976. No hearing was held in this matter.

The Sanitary District of Elgin is a municipal corporation that provides wastewater treatment for a population of approximately 70,000 people in the City of Elgin and the Village of South Elgin. The District does not own any combined sewers but has built diversion structures at the ends of combined sewers owned by the City of Elgin. These diversion structures were used to divert combined sewage flows from the Fox River to the District's main plant for treatment. Since the District is the treating authority for wastewater, it is responsible for achieving compliance with Rule 602(c) by giving treatment to all combined sewer overflows sufficient to prevent pollution or the violation of applicable water quality standards, not later than December 31, 1975 as established by Rule 602(d)(3). The District's main plant has a design dry weather flow of 8.6 MGD and is capable of providing primary treatment and disinfection to 2.5 times the dry weather flow.

In 1973 the District and Elgin retained a consulting engineering firm to study the combined sewer overflow problem. In October of 1975 the consultant recommended the construction of a 100 MGD wastewater treatment plant in order to prevent pollution of the Fox River from the combined sewer overflows during wet weather.

The District is normally not authorized to sell General Obligation Bonds that would place it in debt beyond 5 per centum of the valuation of taxable property in the District, assessed for the taxable year 1974 to be 270 million dollars. The Dis-

trict is currently undergoing a 12 million dollar plant improvement and has a debt of 8 million dollars; therefore, the District can raise no more than 5.5 million dollars for the combined sewer overflow project. The construction of the proposed plant would cost approximately 11.1 million dollars, and absent a Section 46 Order of the Board the District does not have the legal authority to sell bonds to raise this amount of money. North Shore Sanitary District v. Pollution Control Board, 302 NE 2d 50 (1973). Thus, the District alleges it will not be able to solve the problem until it receives an IEPA and/or USEPA construction grant. The District, on behalf of the District and Elgin, has filed for a Federal Grant and/or a State Grant and has been given a priority number of 753 for fiscal year 1976.

The District's NPDES permit contains a schedule for bringing the combined sewer overflows into compliance and this schedule keys all dates and the final effluent limitations to dates after which fund grants have become available. In the meantime, the District is required to maintain optimum operating efficiency and convey as much flow to its plant for treatment as possible.

The Agency has recognized the fact that 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, the Agency submits that the District has established sufficient hardship to entitle it to a variance.

We are disposed to grant relief. The District did take affirmative action by retaining a consultant in early 1973 to study the problem of combined sewer overflows. The District has applied for state and federal grants to implement the consultant's recommendation for the construction of a 100 MGD plant, but many other projects will be funded before the District's project. The costly nature of the proposed plant when coupled with the restrictions on the District's bonding power make grant assistance a necessity. Once again it is noted that the District's main plant is presently being upgraded at a cost of 12 million dollars and that the District presently has a debt of 8 million dollars. In view of these efforts, we believe an arbitrary and unreasonable hardship would be placed on the District by requiring the massive capital outlays necessary for compliance without first allowing the District to obtain assistance from existing grant programs, and particularly so when

the District would be precluded from any reimbursement from grant funds if they were to proceed in advance of a grant award.

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

ORDER

1. The Elgin Sanitary District is granted variance for its main plant 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 such date as may be adopted by the Board in consideration of the Agency Regulatory Proposal (R75-15), whichever is later.

2. The District 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 District is offered a grant during this period and the District does not respond with appropriate action to bring it into compliance.

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 March, 1976 by a vote of 4-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board