

ILLINOIS POLLUTION CONTROL BOARD  
March 1, 1979

WILDROSE CORPORATION & )  
L.A. GOLDSCHMIDT, )  
 )  
Petitioners, )  
 )  
v. ) PCB 78-253  
 )  
ENVIRONMENTAL PROTECTION AGENCY, )  
 )  
Respondent. )

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

On September 18, 1978, Wildrose Corporation (Wildrose) and L.A. Goldschmidt filed a petition for variance requesting relief from Rules 604, 951 and 962 of Chapter 3: Water Pollution Control Rules and Regulations, to allow a sanitary sewer extension tributary to the St. Charles, Illinois sewage treatment plant. No hearing was held in this matter, and the Board has received no public comment.

This matter is similar to two cases decided previously by the Board, Shodeen and St. Charles v. EPA, PCB 78-173 and Rossetter, Fitzsimmons and St. Charles v. EPA, PCB 78-147. This case, as in the two previous cases, is concerned with an Illinois Environmental Protection Agency (Agency) sewer ban in St. Charles, Illinois due to intermittent sanitary sewer overflows into the Fox River in violation of Rule 602(b) of Chapter 3 of the Board's Regulations. Although the St. Charles sanitary treatment plant is capable of handling all current sewage flows, there is apparently not adequate capacity in the delivery system to handle flows during periods of excessively heavy rainfall when infiltration and inflow of extraneous water into the system due to defective piping and illegal connections necessitates bypassing into the Fox River.

The parties herein have entered into a stipulation of fact and have agreed that a variance is necessary only from Rule 962 of Chapter 3. The stipulated facts include information concerning the St. Charles wastewater treatment plant and the delivery system with respect to overflows during excessively heavy rainfall. In addition, the parties stipulate to information contained in a report developed by RJN Environmental Associates, Inc., for Shodeen, Rossetter and Fitzsimmons in the previous variance cases decided by the Board. This information was the basis for the Board's previous grant of variance in Shodeen and Rossetter.

New facts brought to the Board's attention in this case include a program by the City of St. Charles to minimize and eventually eliminate sanitary sewer overflows. The City has been awarded a Step 1 grant and is conducting a sewer system evaluation study which is now anticipated to be completed by early summer 1979. In addition, St. Charles is initiating a program to fix defective pipes, which will allow infiltration into the system, and to identify and eliminate illegal connections to the sewer system. St. Charles thus expects to gradually decrease the volume of extraneous flow through its system. The St. Charles program is projected to be completed prior to 1984.

The development under consideration here, Wildrose Springs, will be completed gradually over a five year period and will generate a wastewater flow estimated to be between 10,000 and 51,000 gallons per day over a period from 1980 through 1984. The projected completion dates and the cumulative wastewater contribution of the project are listed on page 4 of the Stipulation presented to the Board, dated February 9, 1979, which Stipulation is incorporated by reference as if fully set forth herein.

According to Tables II-5, II-6, and II-9 of the RJN study, the additional wastewater flow resulting from Wildrose Springs as fully developed would have added no more than 1.8% to the maximum previously recorded overflows in 1976. In addition, it is anticipated that as the Wildrose Springs contribution increases year by year, the program instituted by the City of St. Charles will be concurrently decreasing the flows due to adverse weather conditions.

The Stipulation of Fact recites the history of the proposed development dating from 1970 when Wildrose began the process of planning, engineering and design. This process was completed in 1975 when the property was annexed to St. Charles and all preliminary approvals of the site plan and zoning were obtained. Due to severe financial problems at that time, Wildrose was unable to commence construction and was consequently unable to make required payments on outstanding loans. In June of 1976, Wildrose filed a petition for arrangement under Chapter XI of the Bankruptcy Act in the United States District Court listing liabilities of about \$800,000.00. In December of 1976, Wildrose contracted to sell the west 125 acres to Goldschmidt. The bankruptcy court approved the agreement, and Goldschmidt subsequently proceeded with the pre-development work--including architectural design, engineering plans, market research, etc. incurring expenses in excess of \$60,000.00 as of March 10, 1978, the date when the Agency placed St. Charles on a restricted status. Construction was to commence in mid-1978.

If Wildrose Springs is unable to proceed, Wildrose will be denied an opportunity to make a return on its investments. In addition the park and school districts will lose a donation in the form of land and/or cash, and the City of St. Charles will

be denied sewer connection fees and water connection fees which have been earmarked for capital improvements to the City's wastewater treatment facilities and water distribution systems. Furthermore, taxing bodies in the area will be deprived of tax revenues, as was the case in Shodeen and Rossetter.

The Agency in its recommendation proposes that the Board deny the requested variance, stating that any increase in the discharge to the Fox River, however small, would be detrimental to the environment. In the alternative, should the Board decide to grant the variance, the Agency suggests that the variance be conditioned upon step-wise discharges, scheduled pursuant to the proposed building program contained in the Stipulation of Fact. In this manner it is hoped that the increased discharge by Wildrose Springs would be countered by concurrent improvements in carrying capacity due to the program being pursued by the City of St. Charles. Wildrose on the other hand argues that it should be granted an unconditioned variance similar to those granted in Shodeen and Rossetter without the stepped discharge condition.

Balancing the very minor potential environmental harm against the potential financial damage to Wildrose and the surrounding community should the variance be denied, and considering the fact that Wildrose was well into the development of this area prior to the imposition of the restricted status on the St. Charles sewage system by the Agency, the Board finds that it would be an arbitrary and unreasonable hardship to deny the requested variance in this case. The Board is not persuaded, however, by the Wildrose contention that it should be granted an unconditioned variance. The petition for variance was founded upon the plan of development proposed and followed by Wildrose prior to the Agency restricted status determination. It therefore follows that any variance granted should be conditioned to follow the proposed development plan. The Board will condition the variance upon a step-wise discharge limitation pursuant to the previously noted program contained on page 4 of the fact stipulation. In addition, the Board shall, on its own motion, implead the City of St. Charles in this matter for the purpose of notice.

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

#### ORDER

It is the Order of the Pollution Control Board that:

- 1) Wildrose Corporation and L.A. Goldschmidt be granted variance from Rule 962 of Chapter 3: Water Pollution Control Rules and Regulations to allow a sanitary sewage extension tributary

to the St. Charles sewage treatment plant subject to the following conditions:

- a) Discharge shall be limited in a step-wise fashion pursuant to the estimated flow contained on page 4 of the Stipulation of Fact filed before the Board February 9, 1979, which stipulation is incorporated by reference as fully set forth.
- b) Within 45 days of the adoption of this Order, the Wildrose Corporation and L.A. Goldschmidt shall execute and forward to the Illinois Environmental Protection Agency, 2200 Churchill Road, Springfield, Illinois 62706 a Certification of Acceptance and Agreement to be bound to all terms and conditions of this Order. The 45 day period shall be held in abeyance during any period this matter is being appealed. The Form of said certification shall be as follows:

CERTIFICATION

I, (We), \_\_\_\_\_ having read and fully understanding the Order of the Illinois Pollution Control Board in PCB 78-253, hereby accept said Order and agree to be bound by all of the terms and conditions thereof.

SIGNED \_\_\_\_\_

TITLE \_\_\_\_\_

DATE \_\_\_\_\_

- 2) The City of St. Charles is made a party hereto for the sole purpose of notice.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 1<sup>st</sup> day of March, 1979 by a vote of 4-0.

Christan L. Moffett  
Christan L. Moffett, Clerk  
Illinois Pollution Control Board