

ILLINOIS POLLUTION CONTROL BOARD  
March 13, 1975

FIRST TRUST AND SAVINGS BANK OF )  
TAYLORVILLE )  
 )  
Petitioner, )  
 )  
v. ) PCB 74-448  
 )  
ENVIRONMENTAL PROTECTION AGENCY )  
 )  
Respondent.

Mr. James Beavers, Attorney, appeared for the Petitioner;  
Mr. Henry Handzel, Attorney, appeared for the Respondent.

OPINION & ORDER of the Board (by Mr. Zeitlin)

Petitioner in this matter seeks a variance from Rule 962 (a) of Chapter Three: Water Pollution, of the Rules and Regulations of the Pollution Control Board (Board). That Rule requires that the Environmental Protection Agency (Agency) deny an operating permit, as required by subpart (b) of Chapter Three, which would cause a violation of the Environmental Protection Act or of that Chapter if granted.

First Trust and Savings Bank of Taylorville (First Trust) filed its Petition for Variance in this matter on November 27, 1974. First Trust, acting as trustee of an Illinois land trust, requested relief to allow the use of existing sewer facilities to operate a 98 bed nursing home in Taylorville. Pursuant to a more information Order entered by the Board on December 5, 1974, First Trust filed an amendment to its Petition. In its Recommendation, filed on February 3, 1975, the Agency recommended that a variance in this matter be denied unless and until Petitioner submitted proof from the Illinois Department of Public Health that such a nursing home was actually necessary in the Taylorville area; the Agency further recommended that even if such proof were forthcoming from the Department of Public Health, a variance in this matter should be granted only upon the condition that Petitioner install appropriate holding tanks to prevent backups in surrounding area sewers during wet weather.

At a hearing held in the matter on February 21, 1975, the parties offered considerable testimony and stipulated as to many of the facts surrounding this matter. Those stipulated facts, consisting of numbered paragraphs in First Trust's petition ("Pet."), and the Agency's Recommendation ("Rec."), are quite extensive, and form the basis for much of this Opinion.

On February 25, 1975, the Agency submitted an Amendment to its Recommendation. The Agency now recommends that the variance in this matter be granted, subject to considerably less stringent conditions.

On February 26, 1975, First Trust filed a motion for Early Decision and Interim Relief. The interim relief sought amounts to permission to operate pending events to be discussed below. That motion is considered with this Opinion and Order.

#### BACKGROUND

The beneficiaries of the land trust represented by First Trust finalized their initial plan to construct a nursing home in Taylorville in early 1974. The land trust was formed and construction begun shortly after that time (R. 49). A permit to hookup the nursing home to an existing 8" sewer was obtained from the City of Taylorville in April of 1974 (R. 64). Petitioners state that they had no knowledge at that time of any further permits required under the Act or the Board's Rules and Regulations (R. 65). Petitioner's nursing home was subsequently connected to an existing 8" line.

On May 10, 1974, the Agency placed the Taylorville Sanitary District's Northwest Plant on restricted status. Petitioner's nursing home, currently attached to the 8" line, is tributary to the Northwest Plant.

Taylorville has a largely combined sanitary and storm sewer system. At the time the Agency placed Taylorville's Northwest Plant on restricted status that plant had a current average daily flow of 1.115 MGD; the plant's design average flow capacity is 0.45 MGD (R. para. 13). The plant was at that time operating with an organic load of approximately 338% of capacity, and a tributary hydraulic load of 220% of capacity. Since the Agency imposed its sewer ban, the average daily flow at Taylorville's Northwest Plant has been between 0.90 and 0.97 MGD.

Petitioner has also stipulated to the Agency's analysis of hydraulic overloading in the 8" sewer to which Petitioner's nursing home was hooked up (Rec. para. 20, 22). That sewer connects with a 10" sewer, which in turn is tributary to a 36" interceptor. The 8" and 10" sewers function as a combined storm and sanitary line, and during periods of heavy rainfall surcharge and cause basement backups in the area adjacent to the nursing home. The Agency received several complaints of sewer backup problems in Taylorville during 1974. During a house-to-house inspection of the area near the nursing home, four of six individuals whom the Agency was able to interview reported sewer backup problems. The Agency felt in its Recommendation that use of the 8" sewer by the nursing home would aggravate the basement backup problem.

Petitioner was notified by the Agency, by telegram, of the illegality of its connection to the 8" combined line on November 15, 1974. After the subsequent rejection of a Permit Application, this action was filed (R. 65).

DISCUSSION

The Agency's initial opposition to an outright grant of the variance in this matter was based largely upon the present problem of sewer backups in the area adjacent to the nursing home. The Agency noted that the Taylorville Sanitary District is currently awaiting grant funding for the expansion of its Northwest Plant. Testimony elicited at the hearing indicated that the plant expansion may be operating within two years (R. 98). Much of the planning and design has been substantially completed for such additions. There is apparently some significant chance that the hydraulic overloading of the Northwest Plant may be alleviated by the diversion of some sewers to Taylorville's other treatment plant (Rec. para 11.).

The Agency notes that operation of the nursing home would increase the population loading at the Northwest Plant by approximately 1%. Further, such operation would result in an increase of actual flow to the Northwest Plant of only 0.43%. This is due, as the parties have stipulated, to the fact that nursing homes generate an estimated flow as low as 61 gallons per bed per day, as against the standard of 100 gallons per day. The parties have also noted that only about 50% of the load on the Northwest Plant resulting from the new nursing home would be an addition to the load currently existing. This fact results from plans to transfer many of the patients who will occupy the nursing home from other existing facilities (R. 40, 90).

Also, the Agency notes that an NPDES final permit (Permit NO. IL-0031356) for the Taylorville Northwest Plant sets interim effluent requirements at 25 mg/l BOD and 40 mg/l suspended solids until June 30, 1977. (Rec. para. 11). The plant is subject to effluent requirements of 10 mg/l BOD and 12 mg/l suspended solids under Rule 404(f) of Chapter Three: Water Pollution. Actual sampling of the plant's effluent in May, September and November, 1974 yielded results of 10, 14 and 19 mg/l BOD<sub>5</sub>, and 60 and 42 mg/l suspended solids. In light of these factors the Agency does not feel that the nursing home's impact on the Northwest Plant's effluent will be significant.

To resolve the problem of sewer backups in the area surrounding the nursing home, Petitioner stated that it is willing to construct an alternate sewer line, bypassing both the 8" and 10" lines described above. This alternate line, also 8", would run several blocks and flow directly into the 36" interceptor with which the present 8" and 10" system intercepts. That interceptor has an 18 MGD flow capacity (R. 112,113). The 7,000 gpd flow from the nursing home would thus bypass completely the backup problem area (R. 106). There was testimony that this alternative would not further aggravate the backup problem, (R. 113), and would not exacerbate the hydraulic or organic load on the Northwest Plant. Testimony presented by the Agency tended to agree with this analysis (R. 28).

The parties testified that the new sewer line would require 30 to 60 days for construction and would cost approximately \$30,000 (R. 107,108). Further, hookup by other individuals to the new line could possibly be of use to alleviate the presently existing backup problem (R. 102). Based on this proposed solution, the Agency in the Amendment to its Recommendation proposes that the Board grant this variance, but only after the proposed 8" line has been constructed by Petitioner.

As the Agency pointed out in its initial Recommendation, the Board realizes that the variance in this matter cannot be based solely on hardship to Petitioner. There has been no allegation that any financial hardships suffered by Petitioner would be of a serious nature, and testimony indicated that Petitioner's present costs are about \$2,200 per month (R. 72).

The grant of the variance here must also be considered in terms of hardship to the public. Such hardship, if it is to be found, must be based on an outstanding need in the Taylorville community for Petitioner's facility, and the Board must then weigh such hardship against the results and/or impact of such additional flow as will be generated by Petitioner's operation on Taylorville's Northwest Plant, and on the backup problem in the area of the nursing home.

The record is replete with testimony as to the need for facilities such as Petitioner's in the Taylorville area. In fact, since the record in this matter is largely composed of testimony regarding the magnitude of such a need, individual instances need not be cited. It will suffice that such a need is generated by both a present inadequacy in the number of available nursing home beds, and the imminent closure of an existing area nursing home due to inadequate facilities. In the Amendment to its Recommendation, the Agency admits that this need is evidently genuine.

It appears, however, that the sewer backup problem in the area of Petitioner's nursing home is also genuine, and serious. Thus, while the Board appreciates the plight of individuals attempting to obtain nursing home space, the situation here does not warrant immediate relief. While the need for nursing home beds in the Taylorville area has been demonstrated, the facts here do not indicate that a dire emergency exists.

Petitioners have not shown that a delay of 30 to 60 days, or less, pending the completion of the alternate sewer line to be constructed for the nursing home, would constitute an undue private or public hardship. Petitioners have admitted that, although due perhaps to ignorance, the fault in this matter lies with Petitioner. Had Petitioners acted properly in seeking the appropriate relief at an earlier time, they would not now be left with a completed, empty nursing home (R. 29,64). Balancing the hardships in this matter, the Board finds that while it is appropriate to grant this variance, it would be inappropriate to impose the hardship of further aggravation of sewer backups on the residents of the area surrounding the nursing home.

Petitioner's Motion for Interim Relief seeks permission to operate the nursing home using the existing 8" hookup, pending completion of the alternate line. As we have decided that this would impose an undue hardship on the surrounding residents, the motion must be denied.

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. Petitioner First Trust and Savings Bank of Taylorville, as Trustee for Trust No. 375, the Taylorville Care Center, Inc., be granted a variance from the requirements of Rule 962(a) of Chapter Three: Water Pollution of the Board's Rules and Regulations to allow a sewer connection for such nursing care facility, as of the date of this Order, subject to the following conditions:


a. Petitioner shall install an 8" sanitary sewer connecting said nursing care facility directly to the 36" interceptor sewer running along Chaney Ave. in Taylorville.

b. Petitioner shall apply for all necessary permits for the proposed 8" sanitary sewer.

c. Petitioner shall not generate sewage waste from its nursing care facility unless and until such proposed 8" sanitary sewer is constructed and operational.

2. Petitioner's Motion for Interim Relief is Denied.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board hereby certify that the above Opinion & Order were adopted on the 13<sup>th</sup> day of March, 1975 by a vote of 4 to 0.

  
Christan L. Moffett, Clerk  
Illinois Pollution Control Board