

ILLINOIS POLLUTION CONTROL BOARD

March 8, 1973

DONALD R. GREGG and ROSE M. GREGG,)	
)	
Petitioners,)	
)	
vs.)	PCB 72-362
)	
ENVIRONMENTAL PROTECTION AGENCY,)	
)	
Respondent.)	

Burton Sapoznick, Attorney for Petitioners
Dennis R. Fields, Assistant Attorney General for the EPA

OPINION AND ORDER OF THE BOARD (by Mr. Henss)

Petitioners Donald and Rose Gregg own a thirty bed nursing home which is currently located at East Dundee, Illinois. The State of Illinois has ordered Petitioners to close the East Dundee facility by January 1, 1975 since it does not meet fire and safety requirements for a nursing home. Petitioners desire to build a new nursing home in the Village of Carpentersville, Illinois to house 118 patients. The new facility will be valued in excess of \$1,000,000. Mr. and Mrs. Gregg were unable to obtain permission to connect to the Carpentersville sewer and therefore, filed this Petition for Variance from Title III Section 12(c) Environmental Protection Act. The Statute prohibits the sewer connection in the absence of an EPA permit. The parties have stipulated that the EPA would deny Petitioners a sewer connection permit and ask that we regard this case as both a Petition for Variance and an Appeal from a permit denial.

According to the testimony, Petitioners have for a number of years planned to build a new nursing home facility. The land in Carpentersville was purchased some eight years ago and preparations have proceeded through the survey, soil borings, clearing of trees and the filling of some low areas on the property. Petitioners also obtained the necessary zoning change from the Village of Carpentersville for the construction of a nursing home and obtained the Certificate of Need from the Illinois Department of Public Health stating that the facility was needed in this community. Petitioners have paid in excess of \$15,000 to date including \$2,000 toward the architect's fee. Architectural plans have been completed and a statement for services in the

amount of \$67,359 submitted by the architect to Petitioners.

On August 2, 1971 the Village Manager of Carpentersville wrote a letter certifying "that the municipal water and sewer services are available and adequate to serve the nursing home proposed by Donald Gregg at 118 Northwestern Avenue". This letter was used by Petitioners for the purpose of obtaining financing for the project.

The adequacy of the Carpentersville sewer system has apparently been the subject of a long series of correspondence between the Village, the Illinois Environmental Protection Agency and its predecessor the Sanitary Water Board. The parties stipulated that four letters represent the EPA policy regarding the granting of permits for sanitary sewer extensions in the Village of Carpentersville. These letters, dated December 22, 1967; June 1, 1970; August 30, 1971 and March 22, 1972 were never introduced into evidence. The Agency did say, however, that they were opposed to the issuance of a permit for this sewer connection.

The Carpentersville sewage plant was designed to treat an average daily flow of 3.5 million gallons and meet the standards of 20 mg. per liter bio-chemical oxygen demand and 25 mg. per liter suspended solids. The average flow during 1972 prior to the hearing was 5.1 million gallons per day and the effluent at the sewer outfall consistently failed to meet the Standards for BOD and suspended solids. The conclusion is that the effluent exceeded Standards because of overloaded conditions at the treatment plant.

Petitioners' witness testified that the nursing home effluent would be 7,046 gallons per day, that this would constitute .1% of the flow to the sewage treatment plant and would have a negligible influence on the plant. This same argument, of course, could be made for other applicants. Acceptance of such an argument would mean loss of State power to upgrade sewage systems.

The Village of Carpentersville at the time of the hearing in December 1972 was preparing final plans for a \$3.5 million expansion of their sewage treatment plant and sewer system. The Carpentersville voters have approved the issuance of bonds in the amount of \$750,000 as the local share of the construction cost. The availability of Federal and State funds will not be known until the final plans are submitted to the State. The project completion schedule shows the start of construction in May 1973 and completion of construction in September 1974.

If this construction schedule can be met it appears that the Carpentersville facility will be meeting State standards prior to the December 1974 deadline for vacating the East Dundee nursing home.

There is no assurance, however, that the construction schedule can be met. This will not be known for several months. Once the construction begins on the sewage treatment plant we will have no objection to the commencement of construction on the nursing home facility. Sewer hookup would be delayed until the completion of the sewer expansion program. We do not want to authorize a connection to a seriously overloaded sewage treatment plant and system. It would be appropriate, however, for the two projects to proceed together, so that no time is lost in effecting the sewer connection when the plant and sewer system can accept the extra load.

Because the Carpentersville sewer and plant expansion has not yet been approved, and funds are not yet available so that construction may begin in May 1973, we are compelled to deny the issuance of a permit. In any event, we would not grant a variance from Title III Sec. 12(c) of the Act since that Statute, providing for a State permit program, is an essential part of the pollution control plan of the State of Illinois. This issue is properly raised by application to the Environmental Protection Agency for issuance of a permit. Upon the denial of that permit an appeal may be made to this Board.

Although we deny the variance and deny the permit appeal we do by this Opinion indicate to both parties that nursing home construction should proceed along with the construction of the new sewage treatment facilities. This may be taken into consideration in any future permit proceedings.

ORDER

It is ordered that:

1. The Petition for Variance be and it is hereby denied.
2. The issuance of a permit for Petitioner to connect to the Carpentersville sewer is hereby denied without prejudice, however, to Petitioner's right to apply to the EPA for such permit when the Carpentersville sewer construction is underway.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order was adopted this 8th day of March, 1973 by a vote of 3 to 0.

Christan L. Moffett

