

ILLINOIS POLLUTION CONTROL BOARD  
April 6, 1989

IN THE MATTER OF: )  
 )  
PROPOSED SITE SPECIFIC RULE ) R88-6  
CHANGE FOR CITY OF MENDOTA: )  
35 ILL. ADM. CODE 306.304 )

OPINION AND ORDER OF THE BOARD (by M. Nardulli):

This matter comes before the Board from a January 15, 1988 petition for site-specific relief filed on behalf of the City of Mendota (hereinafter "Mendota"). Mendota seeks regulatory relief for five location points from 35 Ill. Adm. Code 306.304 which prohibits overflow from sanitary sewers. The following site specific rule was proposed and published in the Illinois Register on April 22, 1988:

SUBPART C: COMBINED SEWERS AND TREATMENT PLANT BYPASSES

Section 306.304 Overflows

Overflows from sanitary sewers are expressly prohibited, with the exception of the following listed overflow points, where overflows will be allowed when the treatment facilities of the sanitary sewer system are operating at 100% of designed maximum treatment capacity:

-Mendota, LaSalle East Sixth Street Bypass, Overflow Point 002

-Mendota, LaSalle East Side Pump Station Bypass, Overflow Point 003

-Mendota, LaSalle First Avenue and Ninth Street Bypass, Overflow Point 004

-Mendota, LaSalle Oak Court Siphon, Overflow Point 005

-Mendota, LaSalle Excess Flow Holding Lagoon Bypass, Overflow Point 006 and 007

(SOURCE: Amended at \_\_\_\_ Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_).

In its comments of June 20, 1988, the Agency questioned whether the proposed language for the rule was appropriate. The Agency questioned the use of the term "combined sewer overflow" when the sewer system that is the subject of the proceeding was

designed as a sanitary sewer system. The Agency also recommends that the rule should be prepared for Subpart F: Site Specific Rules and Exceptions Section 306.502 instead of Section 306.304. The Agency further suggested that the City of Mendota's proposal should not have been accepted by the Board or that the Board should have required Mendota to propose language of its own.

There is merit to the Agency's contention that the system that is the subject of this rulemaking is a sanitary sewer system and not a combined sewer system. In Section 301.255 of the Board's regulations, combined sewer is defined as "a sewer designed and constructed to receive both wastewater and land runoff." In the proceeding in R81-17, Review of Existing Regulations, 35 Ill. Adm. Code 306.103, the Agency recommended that the definition of Sanitary Sewer be amended to allow sanitary sewers to be classified as combined sewers in systems where deterioration had resulted in numerous access points for storm and groundwater. Unfortunately, no definitional changes were ever proposed and the change has not been made, R81-17 In the Matter of: Review of Existing Regulations, 35 Ill. Adm. Code 306.103, Second Notice, December 2, 1982. Nor has there been any action to amend the definition of combined sewer in the regulations. In this matter it was not clear whether the system was designed as a combined sewer or as a sanitary sewer system. However, the petition filed did indicate that the system did operate as a combined sewer system. Consequently the Board proposed language to amend Section 306.304.

The Board's intention in drafting the proposal was to develop a basis for comment at hearing. The Board rejected the Agency's recommendation that the proposal be dismissed without prejudice because the Board viewed the hearing as the best forum at which to clarify what type of sewer system existed in Mendota and the way to gather information necessary to develop a complete and adequate proposal. If necessary, either the Hearing Officer or the Board could have requested that the petitioner draft appropriate language prior to the proposal going to second notice.

Hearing was held on this matter on August 5, 1988 in Mendota, LaSalle County. At the hearing, six persons were called to testify and were examined by representatives of Mendota, the Illinois Environmental Protection Agency (hereinafter "Agency") and the Department of Energy and Natural Resources (hereinafter "DENR"). Two other members of the general public were also present. The Petitioner filed its post-hearing brief on November 3, 1988. The Agency filed its Final Comments in this matter on January 3, 1989. On March 10, 1988, DENR filed a negative declaration stating its determination that the preparation of a formal economic impact study was not necessary in this proceeding. The negative declaration was based on DENR's finding that the record contains sufficient information for the Board to make a reasoned determination. Thus, DENR found that the cost of

making a formal study is economically unreasonable in relation to the value of the study to the Board. On April 18, 1988 the Board received notification that the Economic and Technical Advisory Committee concurred in DENR's negative declaration.

#### BACKGROUND

Mendota was given a prior variance from 35 Ill. Adm. Code 306.304 by the Board on June 30, 1983. That variance expired on September 30, 1984, and no effort was made by Mendota to extend or renew the earlier variance. On December 10, 1985, Mendota filed for a variance for two years so that it could continue to operate various bypasses. The Board denied the requested variance in its opinion and order of July 11, 1986 in PCB 85-182. At hearing the record from these variance requests were incorporated into this proceeding. (R. at 8).

Since the record from PCB 85-182 is incorporated into this proceeding, the Board finds it useful to reiterate some of its earlier findings:

Mendota owns and operates a wastewater treatment plant and sanitary sewer system which serve approximately 7,000 persons. The plant discharges to Mendota Creek, which flows into the Little Vermillion River. The plant has a design maximum flow of 2.8 mgd, and can provide tertiary treatment for 1.8 mgd. Two excess flow lagoons are also located at the plant. Excess flows to the plant are bypassed to the "west" lagoon, then to the "east" lagoon. The effluent from the ponds discharges to the Little Vermillion River (without chlorination) and average 20 mg/l of five day biochemical oxygen demand ("BOD<sub>5</sub>") and total suspended solids ("TSS"). The effluent rarely exceeds 30 mg/l for either parameter.

Mendota upgraded its system in 1977 for the intended purpose of reducing infiltration and eliminating sewage bypassing. Bypassing continues to occur, however, at seven locations. Mendota contends that the engineering firm utilized by petitioner for the prior project severely underestimated the volume of infiltration into the system (R. at 18). More specifically, Mr. G. Richard Spencer, one of Mendota's engineers, testified that his calculations show that for a five-year storm, 11,389,000 gallons per day are delivered to the plant. The prior engineers estimated the expected flow to the plant during a five-year storm to be 5.3 mgd, and allegedly made inadequate modifications to the system based on that estimate. Petitioner alleges that without the bypasses operating, sewage backs up into the basements of approximately 75 residences eight to ten times per year during precipitation events (R. at 88-90).

Bypasses occur at seven locations in Mendota's system. Outfall 001 is located at the sewage treatment plant and discharges to Mendota Creek. Outfall 002 is located at East Sixth Street in the city, and is an automatic bypass which

discharges directly to the Little Vermillion River. Outfall 003 is a manually operated bypass located at the east pump station, and it also discharges directly to the Little Vermillion River. Outfall 004 is a gravity discharge located at First Avenue and Ninth Street, and discharges to First Avenue Creek, a small tributary to the Little Vermillion River. Outfall 005 is another gravity discharge and is located at Oak Court. It discharges to Mendota Creek. Outfall 006 is a 12-inch pipe which extends from the east lagoon to the Little Vermillion River. Outfall 007 is a bypass discharge that occurs to the Little Vermillion River as a consequence of flow across the top of the dikes located at the west lagoon.

In PCB 85-182, Mendota indicated several changes it has made or intended to make to its systems. These improvements were expected to effect a slight improvement in the operation of the system, but were not expected to either eliminate the perceived need for the bypasses or reduce the magnitude of the bypasses in a significant way. Mendota installed a recirculation line from its east lagoon to the tertiary treatment facility to enable the lagoon to handle higher volumes in wet conditions. A motorized gate valve was installed at the head of the plant to control flows into the plant when an operator is not on duty.

At hearing, the petitioner highlighted other work they had been doing to improve the system. The City used dye and smoke to determine where the storm sewers were running into the sanitary sewers and made corrections to the system to eliminate the bypasses that were detected. (R. at 15-18). Mendota also recently passed an ordinance requiring downspouts that drain into the city sewer system to be permanently blocked (R. 20). The city is also repairing leaking manholes and relining sewers to prevent infiltration of surface water (R. 20-21). Mendota is also repairing broken tiles in its storm sewers and catch basins (R. 127-128). Mendota plans on continuing these efforts to find other sources of infiltration (R. 130). However, Mendota does not expect that the elimination of these ascertainable sources will eliminate the need to bypass (R. 110).

Mendota has commissioned an engineering study by the consulting firm of Daily and Associates, Engineers, Inc. The study proposes a \$1.6 million plan to upgrade the system. This upgrade would reduce the number of bypasses to two or three a year. To eliminate bypassing entirely, Mendota maintains that the sewer system would need to be completely replaced, at a cost in excess of \$14 million (R. 49-51).

#### TECHNICAL FEASIBILITY AND ECONOMIC REASONABLENESS

Among the factors considered by the Board in reviewing a request for a site-specific rule is whether compliance with the general rule is technically feasible or economically reasonable. Central Illinois Light Co. v. Illinois Pollution

Control Board, 511 N.E. 2d 269, 271, 110 Ill. Dec. 434, 436 (1987), Proposed Amendments to 35 Ill. Adm. Code 212.209, Village of Winnetka Generating Station, R86-41 (November 3, 1988). Based on the engineering study presented by Mendota, it does not claim that compliance with the general rule is not technically feasible. The study detailed a plan by which Mendota could come into compliance. Therefore, technical feasibility is not at issue in this proceeding.

Mendota bases its argument for site-specific relief on the economic reasonableness of eliminating the bypasses. Mendota argues that the expenditure of \$14 million by a city the size of Mendota to eliminate bypasses is totally unreasonable. Mendota also relies on the Stream Assimilation Study conducted by Daily and Associates to argue that the bypassing has no detrimental environmental impact, and in fact, the Little Vermillion and its tributaries downstream of the City of Mendota exhibit water quality standards equal to or better than upstream.

At hearing, Mr. Spencer testified that the stream assimilation study indicates that the bypasses do not degrade the general water quality of the stream and that the elimination of bypasses would not guarantee an improvement in the water quality of the stream (R. 54). The study points out that there are a number of large sources of pollution to the stream and the bypasses are probably small in comparison to the total discharge to the stream (R. 54). Mr. Spencer noted that the study showed no significant changes in water quality upstream to downstream of the bypasses (R. 55). He also noted that the water quality was not good either upstream or downstream as is typical for rural streams. The study indicates that the Little Vermillion has consistently met present water standards for dissolved oxygen, Ph, and ammonia level downstream of the Mendota sewerage treatment plant (T. 94).

Michael Wasmer testified as to the financial condition of Mendota. Mr. Wasmer stated that the Sewer Department of the City of Mendota has continued to have net operating losses and has an anticipated operating loss of \$14,400 for the fiscal year 1987-1988 (R. 35). Mr. Wasmer further testified that the financial condition of Mendota is essentially the same as it was when the city requested a variance in PCB 85-182 (R. 34). At that time, Mendota had the fifth highest tax rate in LaSalle County while ranking 34th among 37 LaSalle County communities on the basis of per capita income. Mendota's sewer rates exceeded the average of a surveyed group of 36 Illinois communities. Further, in 1985 Mendota anticipated a budget deficit over the next three to four years. In the proceeding, Mendota was characterized as an elderly community of dwindling population (T. 157).

Based on this information, Mendota argues that forcing the closing of the bypasses and causing the backup of sewage into hundreds of homes is totally unreasonable as is the suggestion that Mendota spend \$14 million to eliminate the bypassing. The

petitioner maintains it is economically unreasonable to expect the city to spend the money when its evidence shows that the bypasses are in no way decreasing the water quality downstream of the bypass and no one has produced evidence that Mendota's bypasses are having an adverse environmental impact.

In its comments of January 5, 1989 the Agency stated its opposition to Mendota's request for site-specific relief. The Agency reiterated its position that Mendota's failure to submit flow data for any of the discharge points or other information necessary to estimate the environmental impact of the overflows. The Agency also notes the insufficiency of information of compliance alternatives, information on BOD and TSS analyses and detailed information on discharges, overflows and rainfalls.

The Agency believes that Mendota has failed to show that the requested relief would not have an adverse environmental impact. The Agency pointed out that while Mendota presented testimony that its overflows and bypasses cause no negative environmental impact, the city does not routinely inspect the stream for deposits or debris (R. 135). The Agency opposes the allowing of discharges into waterways that are of poor water quality because such discharges are not consistent with the restoration and enhancement principles of Section 11(b) of the Environmental Protection Act. The Agency recommends that Mendota continue its recent efforts to find infiltration and inflow sources in lieu of site-specific relief.

The Board agrees with the Agency's assessment of the situation. Before the Board will make a determination on the economic reasonableness of a proposal, it must be convinced that other alternative compliance plans have been evaluated and that it is considering the best mode of compliance. In this matter, the petitioner has failed to discuss alternative plans that were investigated and the Board is unpersuaded that the proposed plan is the only viable alternate. The Board applauds the recent efforts of the city to find and eliminate sources of infiltration and inflow and encourages the city to continue these efforts. However, the preliminary nature of these efforts illustrates the amount of work that Mendota must perform before establishing a need for site-specific relief.

The petitioner has stated that eliminating infiltration alone will not eliminate the requirement for bypassing. The Board cannot understand how Mendota and its engineers can be convinced of this fact if the city does not have adequate records indicating the location of storm sewers and cross connections between sanitary and storm sewers. This information is necessary to formulate a plan for reducing infiltration and inflow.

The Board also is not convinced that Mendota has sufficiently investigated alternative compliance plans. There is no indication that Mendota has investigated redirecting the

bypass and overflow away from the Little Vermillion River to holding ponds. At hearing, the mayor of the city stated that they had not investigated the treatment plant at the Del Monte facility in town to see if they could use any of Del Monte's treatment techniques at the Mendota facility (R. 170). This type of investigation would seem to be advantageous to determining if the best mode of compliance is being pursued.

#### CONCLUSION

In this matter, the Board will not provide relief from full compliance until it has been presented with comprehensive alternatives. The Board cannot address the economical reasonableness question until the available alternatives are fully analyzed. Further, if the Board were to allow the site-specific rule before the city has depleted its opportunities to eliminate infiltration and investigate other compliance plans, Mendota would lose its incentive to pursue these options and the potential for environmental improvement would be forfeited. For these reasons the Board cannot endorse site-specific relief for Mendota.

For the reasons stated above, the Board finds that it is technically feasible for the City of Mendota to comply with the general rule. Further, the City of Mendota has failed to show that there are no economically reasonable means to comply with the rule. Therefore, the City of Mendota's petition for a site-specific rule to relieve them from the requirements of 35 Ill. Adm. Code 306.304 is denied.

#### ORDER

The petition for site-specific rulemaking filed by the City of Mendota on January 15, 1988 is hereby dismissed.

Section 41 of the Environmental Protection Act, Ill. Rev. Stat. 1987, ch. 111<sup>1</sup>/<sub>2</sub>, par. 1041, provides for appeal of final Orders of the Board within 35 days. The Rules of the Supreme Court of Illinois establish filing requirements.

IT IS SO ORDERED.

I, Dorothy M Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 6<sup>th</sup> day of April, 1989, by a vote of 7-0.

Dorothy M. Gunn  
Dorothy M. Gunn, Clerk,  
Illinois Pollution Control Board