

ILLINOIS POLLUTION CONTROL BOARD

May 10, 1990

IN THE MATTER OF:)
)
THE PETITION OF THE CITY OF) R88-25
HAVANA FOR A SITE-SPECIFIC) (Site-Specific Rulemaking)
RULE CHANGE TO THE COMBINED)
SEWER OVERFLOW REGULATIONS)

ADOPTED RULE. FINAL ORDER.

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

This matter comes before the Board upon the September 1, 1988 petition for site-specific rule change filed by the City of Havana ("Havana"). Havana seeks relief for two locations from the requirements of 35 Ill. Adm. Code 306.305(a) and 35 Ill. Adm. Code 306.306(c) governing combined sewer overflow systems.

On July 27, 1989, the Board adopted a proposed rule in this matter for first notice. The proposed rule was published at 13 Ill. Reg. 13173 on August 18, 1989. On February 22, 1990, the Board adopted the proposed rule for second notice. On April 3, 1990, the Joint Committee on Administrative Rules (JCAR) issued its certification of no objection to the proposed rule. The Board today adopts the proposed rule for final notice.

PROCEDURAL HISTORY

Hearing was held in this matter on November 30, 1988 in Havana, Illinois, Mason County. At hearing two witnesses were called and were examined by Havana, the Illinois Department of Energy and Natural Resources (DENR) and the Illinois Environmental Protection Agency (Agency). No members of the public were present at the hearing. On December 5, 1988, Havana notified the Board that it would not file post-hearing comments. On January 19, 1989, the Agency filed its post-hearing comments. The Agency noted several alleged deficiencies in Havana's petition and stated that Havana had not explored alternative options.

The Board wishes to express its appreciation to attorney assistant Karen Rosenwinkel and former attorney assistant David O'Neill for their contributions to the drafting of this rule and supporting opinions.

On December 27, 1988, DENR filed a negative declaration stating its determination that the preparation of an economic impact statement was not necessary in this proceeding. This determination was based on DENR's finding that the net economic impact of the proposed rule was favorable and that the costs were minimal and to be borne by the proponent of the rule. After consideration of DENR's determination, the Board entered an order on March 2, 1989, stating that an economic impact statement was not necessary.

On March 14, 1989, Havana filed its response to the Agency's post-hearing comments. (PC # 2.) This response consisted of a study prepared by Havana's engineers which directly addressed each concern raised by the Agency. On July 27, 1989, the Board adopted the proposed rule for first notice.

The Board received two Public Comments since First Notice publication. PC #3 was filed by the Administrative Code Unit of the Secretary of State's Office and addressed nonsubstantive changes to the proposed rule to conform to the Joint Committee on Administrative Rules (JCAR) requirements. Havana filed PC #4 which is an updated schedule of "Phase 1" of Havana's proposal for improving its sewer system. The Board did not receive any responses during the First Notice comment period to its inquiries as to whether evidence of a detrimental environmental impact resulting from the combined sewer overflows exists, whether more economically reasonable methods of compliance could be employed by Havana and whether conditions should be imposed in granting the site-specific relief. On February 22, 1990, the Board adopted the proposed rule for second notice.

BACKGROUND

Havana is located on the Illinois River and has a population of approximately 4,300 persons. The majority of Havana is served by a combined sewer system. Havana operates one wastewater treatment facility. In addition to the main discharge at the treatment plant, there are four combined sewer overflow points in the collection system located at Tremont, Market, Washington and Illinois Streets. Havana has made improvements to the Tremont Street system sufficient to eliminate this outfall and proposes converting the Market Street outfall into a storm sewer. Consequently, the relief requested relates to the two remaining outfalls at Illinois and Washington Streets.

In its petition, Havana proposed a two-phase project. Phase 1 proposed the sealing of the Tremont Street overflow, removing the existing sanitary flow from Market Street by installing approximately 250 feet of sanitary sewer and new service connections so that this overflow would become strictly a storm sewer and submitting a request for site-specific rule change. Phase 2 would include any improvements directed by the Board in

granting site-specific relief.

TECHNICAL FEASIBILITY AND ECONOMIC REASONABLENESS

In reviewing a request for site-specific rule change the Board must determine whether compliance with the general rule is technically feasible or economically reasonable. (Ill.Rev.Stat. 1987, ch. 111 1/2, par. 1027(a); Central Illinois Light Co. v. IPCB, 159 Ill.App.3d 389, 511 N.E.2d 269, 272 (3d Dist. 1987).) Here, Havana does not claim that compliance with the general rule is not technically feasible. Rather, Havana asserts that it is entitled to site-specific relief because compliance with the general rule is economically unreasonable.

Havana retained Randolph and Associates to prepare a Municipal Compliance Plan to investigate means by which Havana could achieve compliance with the combined sewer overflow regulations. Although several alternative methods of achieving compliance were considered, Randolph and Associates asserted that the most cost-effective approach for achieving full compliance is to provide storage at each overflow location. (Rep. of Proc. 11/30/88 at 13.) This plan would require the construction of off-line storage facilities at Washington and Illinois Streets. (Id.) The total capital cost for this project would be \$ 5.6 million. (Id. at 14.) Grant funding of approximately \$ 225,000 would be available to Havana. (Agency Post-Hearing Comment at par. 4.)

According to Havana, full compliance would result in a total user charge of approximately \$ 41.45 per month. (Ex. 1 at par. XI.) The median annual income per household in Havana is \$ 14, 561. (Petition at par. 1.1.) Havana cites an Illinois Environmental Protection Agency ("Agency") user-fee affordability range of \$ 18 to \$ 24 per month for households with similar income levels. (Id.)

In addition to arguing that compliance with the regulations in question is economically unreasonable, Havana also maintains that the detrimental environmental impact resulting from the discharge is minimal. In support of this assertion, Havana submitted an engineering study analyzing the volume and content of the discharge from the various outfall points and a study conducted by the Illinois State Water Survey Division of the Department of Energy and Natural Resources analyzing the Illinois River bottom sediments in the vicinity of the combined sewer overflows. (Ex. 2.) The results of these studies support Havana's position regarding environmental impact and have not been seriously challenged by the Agency.

CONCLUSION

Although the Board posed inquiries into whether evidence of a significant environmental impact from Havana's discharge exists

and whether more economically reasonable methods of full or partial compliance are available to Havana were posed at First Notice, no such evidence was submitted. Before the Board will make a determination on the economic reasonableness of a proposed rule change, it must be convinced that other alternative compliance plans have been evaluated and that the proposed rule is the most viable and environmentally sound mode of compliance. (In the Matter of: Proposed Site-Specific Rule Change for the City of Mendota, R88-6 at 6 (April 6, 1989).) While the Agency, during the First Notice comment period, raised concerns of Havana's failure to consider alternative methods of partial compliance, Havana adequately responded to these concerns. (See, Ex. 2 at par. 3.4.) Havana considered partial separation, peak storage at the plant and full compliance alternatives. (Ex. 2.) The Board remains convinced that Havana has sufficiently investigated alternative compliance plans.

The Board finds that requiring Havana to comply with the combined sewer overflow regulations is economically unreasonable. The evidence introduced by Havana concerning the cost of compliance, the effect of this cost on the citizens of Havana and the lack of a significant detrimental environmental effect from the overflows remains uncontradicted and supports the Board's determination to adopt the proposed rule.

Lastly, the Board notes that it requested comments on its proposal that the rule contain language stating that the grant of site-specific relief does not prohibit the Agency from exercising its authority to impose monitoring requirements upon Havana as a permit condition and that the site-specific rule does not affect the enforceability of any other rule, regulation or provision of the Act. No comments were received in response to this inquiry. The Board concludes that it would be inappropriate to include such language in the text of the rule itself; however, the Board notes that the grant of site-specific rule change does not preclude the application of such action by the Agency, nor does it preclude the applicability of other rules, regulations or provisions of the Act. A grant of site-specific rule change must be read in conjunction with these other regulatory and statutory provisions. Accordingly, the Board proceeds to final adoption of the proposed rule.

ORDER

The Board directs the Clerk of the Board to submit the following adopted rule to the Secretary of State for final notice.

Section 306.503 Havana Site-Specific Discharges

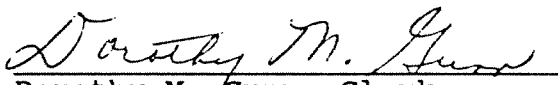
The two discharges from the combined sewer system of the City of Havana, as described below, shall not be subject to the treatment requirements of Section 306.305(a) nor the compliance date of Section 306.306(c). The Washington Street discharge is located at

the foot of Washington Street in the Northwest Quarter, Section 1, Township 21 North, Range 9 West of the Third Principal Meridian and can further be defined as being located at West 90°, 4 minutes 0 seconds longitude and North 40°, 17 minutes 55 seconds latitude. The Illinois Street discharge is located at the foot of Illinois Street in the Southwest Quarter, Section 1, Township 21 North, Range West of the Third Principal Meridian and can further be defined as being located at North 40°, 17 minutes 35 seconds latitude and West 90°, 4 minutes 5 seconds longitude.

IT IS SO ORDERED.

Section 41 of the Illinois Environmental Protection Act (Ill. Rev. Stat. 1987, ch. 111 1/2, 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.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 10th day of May, 1990 by a vote of 7-0.


 Dorothy M. Gunn, Clerk
 Illinois Pollution Control Board