

ILLINOIS POLLUTION CONTROL BOARD
January 10, 1985

OAKBROOK/TAGGERT HOMEOWNER'S)	
ASSOCIATION, INC., an Illinois)	
not-for-profit corporation,)	
)	
Petitioner,)	
)	
v.)	PCB 84-154
)	
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

OPINION AND ORDER OF THE BOARD (by J. D. Dumelle):

This matter comes before the Board on the petition for variance of the Oakbrook/Taggert Homeowner's Association, Inc.* (Association) filed on October 12, 1984. The Petitioner has requested a variance from the September 1, 1984 deadline for submission of a construction/operation permit application (with the appropriate engineering plans and specifications for the connection of the sewer system serving the Oakbrook 5th and 6th Additions to the City of Carlinville's wastewater treatment plant) to the Illinois Environmental Protection Agency (Agency) as mandated by item 5 of the May 18, 1984 Board Order in PCB 83-40 (IEPA v. Oakbrook Utility Company, Inc.).

The Petitioner waived its right to a hearing and no hearing was held in this matter. On November 13, 1984, the Agency filed its Recommendation that variance be granted subject to certain conditions.

The Petitioner presently operates wastewater treatment facilities which serve approximately 136 homes located in the 5th and 6th Additions of the Oakbrook Subdivision near the intersection of State Highways 4 and 108 by the eastern edge of the City of Carlinville in Macoupin County, Illinois. The Association,

*The Petitioner in the initial variance petition was designated as the Oakbrook Utility Company, Inc. However, the assets of the Oakbrook Utility Company, Inc. were acquired on September 6, 1984 by the Oakbrook/Taggert Homeowner's Association, Inc., an Illinois not-for-profit corporation which is the successor entity.

which currently is required to meet the September 1, 1984 deadline date for submission of its construction/operation permit application to the Agency in accord with the Board's May 18, 1984 Order in PCB 83-40, has requested that the deadline date be extended until January 2, 1985 to allow the Association additional time to present its engineering plans to the Agency pertaining to the connection of its sewer system to the City of Carlinville's wastewater treatment plant. (Pet. 3-4; Rec. 1). The Petitioner has emphasized that no extension of the September 1, 1985 date for the completion of construction or the October 1, 1985 date for the operation of the connection to the City of Carlinville's wastewater treatment plant is being requested. (Pet. 4; Rec. 1).

The enforcement action in PCB 83-40 commenced with the filing of a Complaint by the Agency on March 18, 1983 which alleged that the Bellm Utility Company allowed discharges from the outfall pipes of its lagoon wastewater system to contain excessive levels of five-day biochemical oxygen demand (BOD₅) and total suspended solids in violation of 35 Ill. Adm. Code 304.104(a) and 304.120(c) and Section 12(a) of the Illinois Environmental Protection Act (Act). On June 10, 1983, the Agency filed an Amended Complaint to reflect an amendment made to the Bellm Utility Company's Articles of Incorporation which changed the corporate name to Oakbrook Utility Company, Inc. (See: Exhibit A). On September 9, 1983, the parties filed a Stipulation and Proposal for Settlement in PCB 83-40 (i.e., IEPA v. Oakbrook Utility Company, Inc.). On March 21, 1984, the Board entered an Opinion and Order in PCB 83-40 which essentially accepted the proposed settlement agreement developed by the parties. (See: Exhibits B and C). Subsequently, on April 27, 1984, the Oakbrook Utility Company, Inc. filed a Petition to Modify the Board's Order of March 21, 1984 in PCB 83-40 which requested that the Board extend the timetable for compliance which was originally agreed to by the parties in their Stipulation to allow the company additional time to investigate the feasibility of establishing a homeowners' association to own, operate, and control its sewer system. On May 5, 1984, the Agency filed its Response to the petition to modify which indicated that the Agency had no objection to the proposed extension of time. Accordingly, on May 18, 1984, the Board entered an Order in PCB 83-40 which appropriately modified the Board's March 21, 1984 Order. (See: Exhibit D).

After various meetings between a committee of utility customers, the Carlinville City Council, the Illinois Commerce Commission, the Illinois Attorney General's Office, and the Illinois Environmental Protection Agency, it was determined that the homeowners could proceed with the requisite construction and operation of the utility by acquiring the assets of the Oakbrook Utility Company, Inc. (Pet. 2-3). The Petitioner has stated that, on August 29, 1984, a meeting of concerned homeowners was held and they decided to form the Oakbrook/Taggart Homeowner's

Association to take over the operation of the sewer system serving the Oakbrook 5th and 6th Additions. (Pet. 3). On September 6, 1984, the Association formally filed as a not-for-profit corporation with the Illinois Secretary of State's Office. (Pet. 1-2; Rec. 3).

The Agency has stated that it believes that "the homeowners have been making good faith efforts toward achieving compliance with requirements adopted by the Board in the PCB 83-40 proceedings" despite the fact that "details leading up to formation of the Association took longer to resolve than had been expected in early 1984". (Rec. 3). The Agency has noted that, before incorporating as a not-for-profit corporation, the local area homeowners (via an informal seven member committee) had been seriously negotiating with the Oakbrook Utility Company, Inc. pertaining to the expeditious transfer of assets and ownership. (Rec. 3). Additionally, this seven member "sewer committee" had been busily investigating the availability of loans or other financing resources, and had actively consulted and worked with the West Central Illinois Valley Regional Planning Commission and other appropriate agencies during the spring and summer of 1984 in an attempt to properly identify and evaluate financial alternatives and sources of financing capital. (Rec. 3).

The Agency has indicated that it agrees with the Petitioner that a denial of the requested variance would constitute an arbitrary or unreasonable hardship. (Rec. 3).

In reference to potential environmental impact, the Agency believes that the grant of the requested variance will not cause any adverse environmental impact because no change is requested from the Board ordered deadline for completion of construction and operation of the sewer connection. (Rec. 3). Moreover, the Association is required to provide optimum operation and maintenance of the lagoon system until the connection of its sewer system connection to the City of Carlinville's wastewater treatment plant is completed pursuant to the Board's March 21, 1984 and May 18, 1984 Orders in PCB 83-40. (See: Exhibit B; Rec. 3-4).

The Board finds that denial of variance would impose an arbitrary or unreasonable hardship upon the Petitioner and will grant the requested relief, subject to the conditions delineated in the Order.

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

ORDER

The Petitioner, the Oakbrook/Taggart Homeowner's Association, Inc., is hereby granted a variance from the September 1, 1984 deadline for submission of a construction/operation permit appli-

cation (with the appropriate engineering plans and specifications for the connection of the sewer system serving the Oakbrook 5th and 6th Additions to the City of Carlinville's wastewater treatment plant) to the Agency as mandated by Item 5 of the May 18, 1984 Board Order in IEPA v. Oakbrook Utility Company, Inc., PCB 83-40, subject to the following conditions:

1. The new deadline for submission of the sewer connection proposal, necessary permit application, and engineering plans and specifications shall be January 2, 1985, instead of September 1, 1984.

2. The Oakbrook/Taggart Homeowner's Association, Inc., along with its successors and assigns, shall comply with all other provisions of the Board's May 18, 1984 Order in PCB 83-40, as well as the provisions of the Opinion and Order issued in PCB 83-40 on March 21, 1984 and the Stipulation and Proposal for Settlement filed therein on September 9, 1983 with any Board-approved modifications thereof.

3. Within 45 days of the date of this Order, the Oakbrook/Taggart Homeowner's Association, Inc. shall execute and forward to the Illinois Environmental Protection Agency, Division of Water Pollution Control, Compliance Assurance Section, 2200 Churchill Road, Springfield, Illinois 62706 (Attention: Carol Morrison), a Certificate of Acceptance and Agreement to be bound to all terms and conditions of this variance. This 45 day period shall be held in abeyance for any period this matter is being appealed. The form of the certificate shall be as follows:

CERTIFICATE

I, (We), _____, having read the Order of the Illinois Pollution Control Board in PCB 84-154, dated January 10, 1985, understand and accept the said Order, realizing that such acceptance renders all terms and conditions thereto binding and enforceable.

Petitioner

By: Authorized Agent

Title

Date

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 10th day of January, 1985 by a vote of 5-0.

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