

income of approximately \$1 million a year. The proposed facility will discharge approximately 3,700 gallons of sewage a day into the Bensenville sewer system. That system contains two separate facilities, one located in the southeastern portion of the village (south plant) which serves most of the village, and smaller, newer system in the northern part of Bensenville (north plant) which serves, for the most part, an industrial park. Wildcat's proposed facility would be tributary to the north plant.

The north plant was constructed in 1971 with a design average flow of 0.4 mgd. Discharge is to an unnamed ditch, tributary to Willow Creek and the Des Plaines River. Discharge Monitoring Reports for the north plant in 1981 indicate a few minor excursions and an average flow of 0.55 mgd or 138% of design average flow. As a result the Illinois Environmental Protection (Agency) issued a notice of pending restricted status in January 1982. The south plant, on the other hand, has a design average flow of 4.0 mgd and appears to be not yet loaded to capacity. Bensenville plans to construct a new sewer main and other allied improvements in order to divert 0.2 to 0.3 mgd from the north plant to the south plant and to provide capacity for 0.7 mgd of new sewage for future construction in the northern area of Bensenville. Bensenville expects to receive permits from the Agency for construction and operation of Phase I of the improvements by September of 1982 and have the Phase I improvements in operation of May 1983 (Ex. D, Stipulation of Facts). Wildcat's new facility is included in the Phase I improvements. The discharge from Wildcat's proposed facility will flow to the north plant until Phase I improvements are in operation. After Phase I operation begins the sewage will flow to the south plant. The Village of Bensenville alleges, and has undertaken a study to prove, that the north plant could be rated at 0.55 mgd rather than the current rating of 0.4 mgd. This study, however, has not yet been completed.

Wildcat's construction financing is contingent upon the issuance of permits for both construction and operation of the building's sewer connection without conditions by June 1, 1982. The Agency, however, has determined that it would issue a construction only permit which has been rejected by Wildcat's lender.

Wildcat alleges that denial of the proposed variance or any condition placed on its operating permit would result in a loss of the current financing for the proposed facility. This would cause a delay in the construction of the proposed facility resulting in the loss approximately \$1 million in annual rental income. Bensenville alleges that denial of the variance will result in a loss of considerable benefits to the public and the Village including a loss of 120 construction jobs and the delay of permanent office jobs for about 225 workers. Bensenville cites the high rate of unemployment, particularly in the construction industry, that presently prevails. In addition, there would be a loss of property tax revenues of about \$50,000 annually. Wildcat has also agreed to contribute \$85,000 to Bensenville's public sewer system as a part of its proposed facility.

The proposed addition of 3,700 gallons per day of sewage to the north wastewater plant constitutes about 0.65% of the total flow. The north plant is currently experiencing little or no problem in handling the flow directed to it. In addition it is alleged that the proposed facility will produce no sewage until April of 1983 and probably will not produce a significant flow until the end of that year. Before the end of 1983 the sewage flow from the proposed facility will be diverted to the south plant which resolves any potential environmental problem.

The Village of Bensenville has formally agreed to undertake the responsibility of constructing the sewer improvements as stated regardless of the status of Wildcat's proposed facility or any contribution from any entity (R. 66).

The Agency recommends grant of the variance from Rules 951, 952 and 962 of Chapter 3 subject to certain conditions. The Agency also recommends that variance from Sections 12 and 39 of the Act be dismissed as unnecessary. The Board agrees. The record indicates that the probability of environmental harm if this variance is granted is extremely small. Neither sewer problems nor problems with the treatment plant are at issue in this case. The north plant may or may not be hydraulically overloaded. The overload problem, if real, will be corrected at approximately the same time the facility begins its discharge. Balancing the low probability of environmental harm and the Village's commitment to expedite flow diversion to the north plant against the loss of income to Wildcat and the current need for jobs under the prevailing economic and unemployment conditions in the area, the Board finds that it would be an arbitrary and unreasonable hardship to deny the proposed variance.

The Board shall therefore grant variance from Rules 951, 952 and 962 of Chapter 3 in order to allow the issuance of construction and operating permits to Wildcat for the purpose of constructing its proposed facility in Bensenville. In addition the Board will order Bensenville to execute the schedule for completion of the sanitary sewer system improvement as submitted to the Board in Exhibit E to the Stipulation Of Facts filed on May 18, 1982. This schedule was approved by the Board of Trustees of the Village of Bensenville by Resolution dated May 20, 1982 and was filed before the Board on May 24, 1982.

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

ORDER

1. Wildcat #2, a Texas Limited Partnership, is hereby granted variance from Rules 951, 952 and 962 of Chapter 3: Water Pollution of the Board's regulations for the purpose of the issuance of permits to construct and operate a sewer connection tributary to the Bensenville, Illinois sewer system for a proposed office facility located at Thorndale Avenue and Illinois State Highway 83 in the Village of Bensenville, DuPage County, Illinois.

2. The Village of Bensenville shall execute the completion schedule for the sanitary sewer improvements contained in paragraph F, page 2 of the Agency's amended recommendation dated May 18, 1982 pursuant to Exhibit E of the Stipulation Of Facts filed May 18, 1982, both of which documents are hereby incorporated by references as if fully set forth herein.

3. Variance from Sections 12 and 39 of the Illinois Environmental Protection Act are hereby denied as unnecessary.

4. Within forty-five days of the date of this Order, Petitioners shall execute and forward to the Illinois Environmental Protection Agency, 2200 Churchill Road, Springfield, Illinois 62706, a Certificate of Acceptance and Agreement to be bound to all terms and conditions of this variance. This forty-five 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 82-25, dated _____, 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, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 27th day of May, 1982 by a vote of 5-0.

Christan L. Moffett
Christan L. Moffett, Clerk
Illinois Pollution Control Board