ILLINOIS POLLUTION CONTROL BOARD
July 26, 1983

CITY OF MT. OLIVE, Petitioner,	)	
v.	)	PCB 83-9
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, Respondent.	)	

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

This matter comes before the Board on the petition for variance of the City of Mt. Olive (City), filed January 24, 1983 as amended March 14 and May 2, 1983, pursuant to Orders of the Board. Variance relief is requested from various effluent standards; however, the Board construes this petition to request relief from 35 Ill. Adm. Code 309.241(a) [formerly Rule 962(a) of Chapter 3: Water Pollution]. On May 31, 1983 the Illinois Environmental Protection Agency (Agency) filed its Recommendation that variance be denied. Hearing was waived and none has been held.

Variance has been requested by the City to allow continued operation of a sanitary sewer extension currently serving only a six-unit, low-income housing apartment complex located on East Colfax Street. However, additional sewer line has been laid along the balance of the block, which is as yet undeveloped. The apartment complex was built by a private developer, but is owned by the Macoupin County Housing Authority (MCHA), which was added as a party respondent to this action. No construction or operating permits for the sewer extension at issue here were ever applied for or received. Sometime during the summer of 1982, the developer laid 200 feet of sewer line to serve the apartment complex, and the City laid its 150 feet of line to take advantage of the fact that the street was torn up. The Agency became aware of the existence of this non-permitted sewer extension during a routine inspection in August, 1982. Occupancy of the apartment complex apparently began in or about September.

Based on actual water usage figures for the 15 apartment dwellers during September, October, and the first week of November, 1982, the discharge from the complex amounts to 540 gallons per day, with a BOD loading 0.92 lbs./day and SS

loading of 1.08 lbs./day. As to the sewer line installed by the City, no immediate additional flows are expected, since the City is "willing to refuse connections until their sewer system and treatment facilities are upgraded".

The sewer line in question is tributary to the City's "South [Sewage Treatment] Plant", which receives flows from about 40% of the City's population of about 2,357. The South Plant, and the majority of sewers tributary to it, were placed on restricted status by the Agency "in the early 1970's"; the "North Plant" had been placed on restricted status by the old Sanitary Water Board in 1967. The reason for placing each plant on restricted status was that the physical condition of each plant had deteriorated to the point where it was no longer capable of providing the treatment for which it was designed, and because raw sewage was being bypassed to the receiving stream continuously. Operation of the plants and pollution of their receiving streams (Sugar Creek and Silver Creek) was the subject of an enforcement action before the Board, IEPA v. City of Mt. Olive, PCB 74-431, August 14, 1975, which was settled by stipulation.

The City has received a Step 1, 2, 3 construction grant, and is currently in Step 2 of the grant program. The City intends to expand and upgrade the sewer system and the North Plant, and to abandon the South Plant. Start-up of the improved North Plant was scheduled to be October, 1984 as of the date of the City's last grant amendment in August, 1982.

In the meantime, the South Plant is receiving flows which hydraulically and organically overload the plant. The South Plant can accommodate a design average hydraulic load of 150,000 gpd; between March, 1982 and February, 1983 daily flows averaged between 153,432 and 382,000 gpd. The design average organic load is 1500 P.E. The Agency calculates (in the absence of proper influent loading data) that the plant operated at an average organic loading of 1590 P.E. on a BOD basis between October, 1981 and March, 1982; actual figures presented for January and February, 1983 leads the Agency to calculate, for each respective month, BOD loadings of 3490 P.E. and 2590 P.E., and SS loadings of 637 P.E. and 1640 P.E. During the period between March, 1982 and February, 1983 the plant's Outfall 001 was able to meet an interim effluent standard of 60 mg/l BOD on a monthly average in all but two months; however the interim standard of 50 mg/l SS on a monthly average was violated in each of six months. (Interim bypassing is allowed from Outfall 002.)

Sewer system overflows are located at points 300 feet, 3000 feet and 3500 feet downstream of the MCHA apartment complex. At the first overflow point, the City relieves the sewer system during surcharging by pumping wastewater directly from a manhole into a nearby farm field. At the other two

overflow points, surcharging results in blowing the manhole lids off sewers. The Agency reports that no reports of basement back-ups have been made in areas downstream of the apartment complex.

In support of its petition for variance, the City asserts that the flow added to the South Plant by the East Colfax extension represents "only" one-third of 1% of the plant's total flow. The City asserts that it would be arbitrary or unreasonable to require disconnection of the apartments from the sewer system and provision of an alternative sewage disposal system, on the grounds that the unspecified expenses to the "owner and/or residents" cannot be justified, given the small addition to the South plant flow and anticipated North plant completion in 1984.

The Agency argues that any financial hardship is self-imposed, since the long-term existence of restricted status as well as the need to obtain sewer construction and operation permits should have been known to the parties. In recommending denial of variance, it argues that this is a situation where the line should be drawn against even a minimal increase in flows to the plant, citing Willowbrook Development Corp. v. IPCB and IEPA, 92 Ill. App. 3d 1074, 416 N.E. 2d 385, 392 (2nd Dist. 1981).

In reviewing this petition, the Board finds that the City's non-specific financial hardship argument boils down to the mere assertion that since the operation of an unpermitted small flow volume sewer connection is already a fait accompli, that the Board should not require it to be undone. The Board has previously rejected just such an argument, Drake et al. v. IEPA et al., PCB 81-54, December 17, 1981. The Board must again do so here. Variance is denied, on the basis of the City's failure to prove arbitrary or unreasonable hardship.

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

ORDER

The City of Mt. Olive's petition for variance from 35 Ill. Adm. Code 309.241(a) is hereby denied.

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 26th day of July, 1983 by a vote of 5-0.

Christan L. Moffett, Clerk
Illinois Pollution Control Board