

ILLINOIS POLLUTION CONTROL BOARD
May 16, 1985

VILLAGE OF ENERGY AND WILLIAMSON)
COUNTY HOUSING AUTHORITY,)
)
Petitioners,)
)
v.) PCB 84-123
)
ILLINOIS ENVIRONMENTAL PROTECTION)
AGENCY,)
)
Respondent.)

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

This matter comes before the Board upon the August 10, 1984 filing of a variance petition by the Village of Energy (Village) for relief from 35 Ill. Adm. Code 309.241(a) to permit the Williamson County Housing Authority (Authority) to connect a 30 unit housing complex for elderly and disabled people to the Village's organically overloaded sewer system, which was placed on restricted status on May 8, 1980. In an August 22, 1984 Order, the Board joined the Authority as a necessary party and requested additional information. The Village submitted more information on October 1, 1984 while the respondent Agency filed a motion to dismiss on November 7, 1984. The Board denied the motion on November 8, 1984 and ordered the Village to cure all of the deficiencies noted in the August 22 Board Order within 45 days. An amended petition was filed on February 19, 1985 by the Village and the Authority. On April 18, 1985, the Board granted the Agency's motion to file its recommendation instanter. The Agency recommends denial of the requested variance. Hearing was waived and none was held.

The Authority is constructing a 30 unit housing development for the elderly and/or handicapped which consists of twenty one-bedroom units, ten two-bedroom units, and a laundry room. The development is located on East College Street in Energy, Williamson County, Illinois. An eight inch sanitary sewer conveyance system is needed to connect to the Village's eight inch sanitary sewer system. A maximum of 60 people is expected and the wastewater flow, at 100 gallons per person per day, would not exceed 6,000 gallons daily average.

The Authority applied for and received a U.S. Department of Housing and Urban Development (HUD) grant for the Village of Energy housing project. No information has been submitted on the amount of the grant or whether there is a threat of losing this grant.

The Village operates a waste water treatment plant (WWTP) which consists of a single cell lagoon treatment system under NPDES Permit No. IL0023566, issued March 30, 1984. The WWTP has a design average flow (DAF) of 0.10 million gallons per day (MGD) and a design maximum flow (DMF) of 0.25 MGD. The design organic load capacity of the WWTP is 1,000 population equivalents (PE). The order of discharge from the village lagoon is to several stripmine lakes, to Hurricane Creek, and finally to the Big Muddy River.

The present facility is organically overloaded. Agency data from 1980 shows that the organic loading to the facility is 1,181 PE for biochemical oxygen demand (BOD) and 1,262 PE for suspended solids (SS) (Pet., IEPA ltr). The present interim permit limits for BOD and SS are 50 mg/l and 60 mg/l respectively. The Village plans to upgrade the DAF to 0.157 MGD (1570 PE) and the DMF to 0.628 MGD. Once the upgrading is complete, the final permit limits will be 30 mg/l BOD and 37 mg/l SS, based on a three-stage lagoon exemption. The amended Facilities Plan provided for expanding the existing single cell lagoon to a two cell lagoon with ultra-violet light disinfectant facilities. However, as the Agency notes, the amended Facilities Plan is now deficient and will not qualify for Innovative and Alternative (I/A) grant funding (Ag. Rec. 3). An agreement to construct spray irrigation facilities on a local golf course was not reached (Id.). The Village has asked the Agency to reconsider its old facility plan, for which there is no funding available. While the record makes clear the Village's intention to upgrade its WWTP and come into compliance by July 1, 1988, there is no firm compliance plan schedule.

The Authority has identified and priced two alternative plans to treat on-site the wastewater from the housing project if variance is denied and until the restricted status designation is removed from the village treatment facilities. The first is a series of septic tanks, a sand filter and chlorination equipment for temporary treatment. The cost is approximately \$36,900 plus \$1,000 annual maintenance cost (2/19/85 Pet.). The second plan consists of installation of concrete holding tanks and the daily hauling of the wastewater to other permanent treatment facilities. The estimated cost is \$225 per day or \$82,000 per year (Id.).

In order to reduce water usage at the housing project, the Authority is requiring water misers in the water closets and flow restrictors in the shower heads.

Petitioners did not address the environmental impact to the waterways but only furnished data estimating the contribution of 60 PE to the village treatment facilities. The Agency states that the present high BOD and SS discharges will overload the stripmine lakes with nutrients which in turn will limit the quality of Hurricane Creek (Ag. Rec. 8). The Agency furnished data from 1981 on the effluent being colored pea green to light

brown, clarity as being cloudy to cloudy with visible solids, and odor being foul to slight (Id.).

HARDSHIP

Petitioners must show that compliance with the Board's rules and regulations would impose an arbitrary or unreasonable hardship. Ill. Rev. Stat. 1983, ch. 111 1/2, par. 1035. The Authority began the HUD grant process for facilities in the County in 1978. However, the application for the Village units was filed in February of 1981 and was the last one acted on by HUD. Restricted status was imposed by the Agency in 1980. The Agency sent a letter to the Village informing it of this fact on May 8, 1980 (Attach. to Pet.). The Agency states that it gave notice of restricted status in the Board's Environmental Register #245 as early as October 6, 1981 (Ag. Rec. 4). Notice was repeated on a quarterly basis up to the present time (Id.). Site acquisition for the housing project was completed on June 1, 1983. The Village and the Authority applied for a construction permit on April 4, 1984 which was denied on April 24, 1984 (Ag. Rec. 5). The denial letter informed the petitioners that the village facilities were on restricted status (Ag. Rec. Exh. B). The denial letter also informed petitioners of the availability of a conditional installation permit to allow simultaneous construction of the project with the treatment facility upgrading, yet no application was submitted (Id.) The Authority decided to proceed without a construction permit and with knowledge of restricted status. The executive director of the Authority claims that he did not know of the imposition of restricted status until the summer of 1984, by which time construction contracts had already been awarded (Young Affid., attach to 2/19/85 Pet.). The petitioners have not submitted to the Board information on what date(s) construction contracts were awarded. Meanwhile, an Agency inspector discovered unpermitted construction in progress on October 3, 1984 (Ag. Rec. 5).

Petitioners allege hardship because of four reasons (Pet. 4). They allege that the Authority did not know about restricted status prior to site acquisition, "planning" and financial arrangement. While this may be true, it is clear that the Village knew. That this situation may not have been discovered by or relayed to the Authority is not sufficient grounds to grant a variance. Most construction projects of this type require sewer permits and the Authority should have checked into this matter. Any hardship resulting from this oversight is a self-imposed hardship. Petitioners next allege that they are trying to fill a void in the elderly housing market, yet petitioners do not argue that denial of variance will cancel their plans. Thirdly, they argue that significant additional environmental impacts will not occur, yet fail to support this conclusory statement. Indeed, based on the data in the record, the Board finds that the environmental impact on the receiving waterways would likely be adversely affected by grant of variance. Fourthly, petitioners allege that higher public costs will result

because the Authority would have to provide on-site treatment. This most likely is a true statement, but economic grounds alone are insufficient to support a variance request. The Board also notes that the cost of on-site treatment does not appear to be prohibitive. Lastly, while petitioners state that they are trying to fill a void in elderly housing, they conclusorily allege that permanent financing of the housing project could be lost and fail to provide any support for the statement.

The Board has granted prior variances where the need for public housing has outweighed the adverse environmental impact of adding to the sewage load of the existing treatment facility. City of Herrin and Housing Authority of County of Williamson v. IEPA, 57 PCB 341. (PCB 83-169, April 5, 1984); City of Abingdon and Knox County Housing Authority v. IEPA, 49 PCB 419 (PCB 80-163, February 5, 1981); St. Clair County Housing Authority, et al. v. IEPA, 39 PCB 285 (PCB 80-83, August 7, 1980). However, the petitioners in these cases had all started substantial project planning before imposition of restricted status and were in jeopardy of losing federal assistance if variance was denied. Contra, see H.J. Bergman Builders, Inc., et al. v. IEPA, 43 PCB 299 (PCB 81-67, September 3, 1981).

The Board has denied variance in similar cases where the petitioner should have known about the imposition of restricted status, substantial planning was not started until after its imposition, and there was no evidence of loss of federal assistance. Springfield and Sangamon County Community Action, et al. v. IEPA, 59 PCB 263 (PCB 84-32, August 2, 1984). Herein, restricted status was imposed in May of 1980. While the housing project may have been in the preliminary planning stages, no substantial planning had taken place. This conclusion is supported by the lack of a submittal of a HUD grant application by the Authority until 9 months after imposition of restricted status (Young Ltr. attach. to 10/1/84 Pet.). Furthermore, site acquisition was not until three years after its imposition. The Agency attempted to guide the petitioners by informing them of the availability of a conditional installation permit, yet petitioners ignored the suggestion and failed to submit an application.

The Board finds that denial of the variance would not impose an arbitrary or unreasonable hardship. In any event, any economic impact does not outweigh the adverse environmental effect of adding further discharge to an already overburdened treatment facility and likely adverse effect on the receiving waterways.

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

ORDER

The Village of Energy and Williamson County Housing Authority are hereby denied variance from 35 Ill. Adm. Code 309.241.

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 16th day of May, 1985 by a vote of 6-0.

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