

ILLINOIS POLLUTION CONTROL BOARD
October 5, 1982

CITY OF ASSUMPTION,)
)
) Petitioner,)
)
) v.) PCB 82-94
)
) ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,)
)
) Respondent.)

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

This matter comes before the Board on the July 28, 1982 petition for variance filed by the City of Assumption (City). The City seeks extension of its previous 9-month variance (PCB 81-103, October 22, 1981) from the 400/100 ml. fecal coliform limitation of 35 Ill. Adm. Code Subtitle C, Chap. 1, Sec. 304.121 (formerly Rule 405 of Chapter 3: Water Pollution). On August 30, 1982 the Illinois Environmental Protection Agency (Agency) recommended grant of variance until August 1, 1983. Hearing was waived and none has been held.

This Opinion incorporates that in PCB 81-103. As explained in PCB 81-103, the City's existing sewage treatment plant (STP), which has no disinfection facilities, discharges to Big George Creek, tributary to the Sangamon River. Variance was granted until July 31, 1982 based in part on the City's projection that it would have completed upgrading its plant with the aid of Step 2-3 funding through the Construction Grants Program.

The City has been unable to do so because of its inability to obtain financing for its \$490,000 local share of the \$1,200,000 costs for STP rehabilitation. (The City has proceeded to use "money-on-hand" to proceed with a \$400,000 field tile separation and influent pump station project.) The City's municipal bond consultant was unable to promote a sale of City sewer revenue bonds on the private market. The City had also applied to the Farmers Home Administration (FmHA) for a loan commitment. While FmHA expressed interest in the project in January, 1982, it was unable to make a loan offer because of Illinois' statutory limit on the interest rate public corporations could pay on indebtedness pursuant to Ill. Rev. Stat. Ch. 17, §6602 (1981).

In its Recommendation, the Agency noted that this interest ceiling was raised by the enactment of PA 82-746, effective May 12, 1982. In response to Agency inquiry on August 24, 1982, the City contacted its bonding company and FmHA and reported back to the Agency that "financing can now proceed".

The Agency again noted, as it did in PCB 81-103, that if its proposal in R77-12, Docket D were to be adopted, that the City would not be required to disinfect its effluent as its STP is a) more than 20 miles upstream of a licensed bathing beach (none exist within 60 miles downstream), and b) more than 20 miles upstream of a public or food processing water intake (the nearest being that of the Village of Kincaid, 40 miles downstream). The Agency recommends grant of variance for a period to end August 1, 1983, subject to conditions.

The Recommendation does not acknowledge the Board's adoption on August 18, 1982 of an Order and Proposed Opinion in R77-12, Docket D. The Order adopts, for Administrative Procedures Act "second notice" purposes, the essence of the Agency's original proposal. Upon the Board's final adoption and filing of these rules, the City would no longer be required to disinfect its effluent.

Based on this record, the Board finds that denial of variance would impose an arbitrary or unreasonable hardship. The City's financing problems do not appear to have been of its own making. For this reason, and the reasons concerning environmental impact expressed in PCB 81-103, variance is granted for the term and upon the conditions outlined in the attached Order.

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

ORDER

Petitioner, the City of Assumption, is granted variance from 35 Ill. Adm. Code, Subtitle C, Chap. 1, Sec. 304.121, subject to the following conditions:

- a) This variance shall expire on August 31, 1983 or upon the effective date of the changes to Sec. 304.121 proposed in the Board's Order of August 18, 1982 in R77-12, Docket D, whichever occurs first;
- b) Within 45 days of the date of this Order, the City shall submit to the Agency a plan for obtaining financing for its local share of STP upgrading costs.
- c) The City shall expeditiously pursue financing for and upgrading of its STP.

d) Within forty-five days of the date of this Order, Petitioner shall execute and forward to the Steven M. Spiegel, Attorney Advisor, Enforcement Programs, Illinois Environmental Protection Agency, 2200 Churchill Road, Springfield, IL 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 82-94, 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.

Board Chairman J. Dumelle dissented.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 5th day of October, 1982 by a vote of 4-1.

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