ILLINOIS POLLUTION CONTROL BOARD
August 13, 1971

SCOTT VOLKSWAGEN, INC.	)	
	)	
	)	
v.	)	# PCB71-112
	)	
	)	
ENVIRONMENTAL PROTECTION AGENCY	)	

Donald Flannery of Libertyville, for Scott Volkswagen
Delbert Haschemeyer of Springfield, for the Environmental Protection Agency

Opinion of the Board (by Mr. Currie):

Scott Volkswagen requested a variance from our order in League of Women Voters v. North Shore Sanitary District, # 70-7 (March 31, 1971), to permit connection of a proposed new automobile sales and service facility to a sewer serving an overloaded treatment plant. We denied the petition after hearing August 9; this opinion gives our reasons.

The ban on new connections was imposed in recognition of the fact that new wastes added to an already overloaded system would worsen the already severe pollution of water and air due to ill-treated sewage in this area. There can be no exception for small sources; it was the accumulation of such sources, individually too small to be noticed, that largely brought about the present sorry situation. Nor can we grant this variance on the ground that the new facility will replace an existing one that is now discharging a comparable amount of wastes; apart from other arguments, there is nothing to prevent the owner of the old building from putting it to another use.

The Board has granted variances in cases of this nature in which the building in question has been built, or substantial steps taken toward its completion, before the date the connection ban was imposed. E.g., Wachta v. EPA, #71-77 (July 5, 1971). We have, however, held the hardship of complying with the ban insufficient when, as here, the only significant step taken before the ban was the purchase of a lot. Monyek v. EPA, #71-80 (July 19, 1971). In such cases the hardship is that incurred by every owner of undeveloped property in the District, namely, the postponement of the ability to build. To allow a variance in these cases would be to repeal the sewer ban in its entirety.

It was alleged that the denial of the variance might jeopardize the continued existence of the franchise, since the operator's arrangement with the parent company requires it to build a new and more satisfactory facility (R. 22, 28). But the proof falls fall short of convincing us that the franchise will be lost unless we allow more ill-treated sewage to be discharged to the waters. The president of the operating company testified that he had not discussed with the parent company the question whether the impossibility of building as soon as required would result in cancellation (R. 55-57); he indicated that theeparent company was "aware by now that the October 1 date cannot be lived up to" and that there was "a high degree of interest that I get something in brick and mortar, and in soon" (R. 57). A representative of the parent company was unable to indicate what his company would do if the variance was denied (R. 109). We cannot believe that the manufacturer would cut out its only existing outlet in the Waukegan area because of an inability to build that is shared by everyone in the entire Sanitary District. The testimony does include speculation that an existing dealer with better building and a franchise from another manufacturer might apply for the position (R. 96), but we cannot find the fact of unreasonable hardship on the basis of a mere possibility.

In short we believe the result of denying this variance will be that the dealer must put up a little longer with rather cramped quarters. We think that a rather small price to pay to avoid further degradation of the environment pending completion of adequate sewage treatment facilities.

The petition for variance is denied.

This opinion constitutes the Board's findings of fact and conclusions of law.

I, Regina E. Ryan, Clerk of the Pollution Control Board, certify that the Board adopted the above Opinion this 13th day of August, 1971.

Regina E. Ryan