

ILLINOIS POLLUTION CONTROL BOARD
August 30, 1971

MR. & MRS. WALLACE W. PIROYAN)	
)	
v.)	PCB 71-103
ENVIRONMENTAL PROTECTION AGENCY)	
and)	
RAY WICKSTROM)	
)	PCB 71-105
v.)	
ENVIRONMENTAL PROTECTION AGENCY)	
and)	
ALFRED & HENRIET BEDERMAN)	
)	
v.)	PCB 71-173
ENVIRONMENTAL PROTECTION AGENCY)	
and)	
DALE & IRIS SCHLAFER)	
)	
v.)	PCB 71-184
ENVIRONMENTAL PROTECTION AGENCY)	

Opinion of the Board (by Mr. Dumelle)

The petitioners in these cases requested to be exempt from the operation of part of the Board's Order in a previously decided case entitled League of Women Voters, et al v. North Shore Sanitary District, PCB 70-7, 12, 13, 14 (March 31, 1971). None of the petitioners was a party to that case.

The portion of the order from which the variances were sought is as follows:

7. The District shall not permit any additions to present sewer connections, or new sewer connections to its facilities until the District can demonstrate to the Board that it can adequately treat the wastes from those new sources so as not to violate the Environmental Protection Act or the Rules and Regulations promulgated thereunder.

Because allowing new connections would be tantamount to condoning the passage of raw sewage into Lake Michigan the Board imposed a sewer

connection ban on the District. The North Shore beaches are closed this summer and the operations of the North Shore Sanitary District are coupled to those closings in a direct cause and effect relationship. If the District were not discharging into Lake Michigan or if the District was discharging fully treated sewage the beaches would be open.

In PCB 71-103, petitioners, Mr. and Mrs. Wallace W. Piroyan sought to be allowed to connect a single family residence to the North Shore Sanitary District sewer system. As of the time of the imposition of the sewer ban construction of petitioners' house had not yet commenced (R.48) although petitioners had prepared plans and had started negotiating with a bank regarding a mortgage.

In PCB 71-105, Mr. and Mrs. Ray Wickstrom sought permission to connect a single family residence, not yet under construction, to the District sewer system. They owned the property on which the house was to be built.

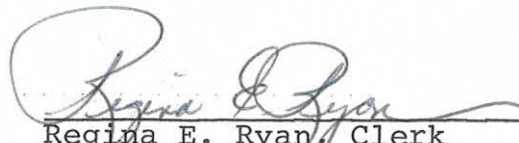
In PCB 71-173, Mr. and Mrs. Alfred Bederman also were the owners of unimproved real estate who sought a sewer connection variance to be able to build a single family dwelling.

In PCB 71-184, Mr. and Mrs. Dale L. Schlafer were in a similar position as the petitioners in the other cases and sought the same relief.

Variances are usually requested from regulations or statutory requirements. However, in these cases individual variances were sought from the operation of a Board Order. Such procedure is clearly provided for by the Environmental Protection Act, Section 35. The standard to be applied in such cases is likewise provided for in the Statute and the Board's Rules. In considering whether to grant the variance the Board must consider all the facts and ultimately use its best judgment coupled with the expertise it is statutorily presumed to embody to determine if compliance with the Order from which exemption is being sought will impose an arbitrary or unreasonable hardship on the petitioner. This hardship must then be balanced against the harm done to the environment. The statutory standard does not embrace every hardship, it speaks of arbitrary or unreasonable hardship. Undeniably petitioners are confronted with some measure of inconvenience in these cases. We cannot, however, view petitioners' plight as arbitrary or unreasonable. In cases where a house has been completely built before the date of the order, or where substantial steps toward completion have been taken we can clearly judge the hardship of non-connection to be unreasonable. In fact we have done so in a previously decided case, Wachta and Mota d/b/a Belle Plaine v. EPA, PCB 71-77. There the petitioner had seven units completely built, and the Board granted a variance to permit the sewer connections. We do not find the requisite hardship in these cases.

The requested variances are denied. This opinion constitutes the Board's findings of fact and conclusions of law in these cases.

I, Regina E. Ryan, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above Opinion on the 30th day of August, 1971.


Regina E. Ryan, Clerk
Illinois Pollution Control Board