

ILLINOIS POLLUTION CONTROL BOARD
October 30, 1980

CITY OF KNOXVILLE,)
)
 Petitioner,)
)
 v.) PCB 80-47
)
 ILLINOIS ENVIRONMENTAL PROTECTION)
 AGENCY,)
)
 Respondent.)

MR. RON HENSON, BARASH & STOERZBACH, APPEARED ON BEHALF OF PETITIONER.

MS. HEIDI E. HANSON, ATTORNEY, APPEARED ON BEHALF OF RESPONDENT.

OPINION AND ORDER OF THE BOARD (by I. Goodman):

On March 24, 1980 the City of Knoxville (Knoxville) filed this petition before the Board requesting a variance to allow connection of a proposed restaurant facility to its sanitary sewer system. Additional facts were presented to the Board in a subsequent amendment to the petition, a hearing was held on July 17, 1980, and the Board has received considerable public comment.

Knoxville requests a variance from Rule 962(a) of Chapter 3 of the Board's Water Pollution Control Regulations to allow the aforementioned connection notwithstanding the fact that the Knoxville Sewage Treatment Plant has been placed on restricted status by the Illinois Environmental Protection Agency (Agency) due to hydraulic overloading. The proposed restaurant would have 150 seats and would discharge an estimated sanitary flow of 7,500 gallons per day. The Agency recommends denial of the variance due to the existence of restricted status, the absence of a showing of arbitrary or unreasonable hardship, and the fact that the Knoxville sewer system presently surcharges into the basements of certain citizens during wet weather.

In a variance case the Board must consider the hardship imposed upon the petitioner by the particular rule or regulation in question and must balance this hardship against the potential harm to the environment should the variance request be granted. In this case, Knoxville spent a considerable amount of time presenting evidence concerning whether or not the restricted status had been correctly imposed upon its treatment plant by

the Agency. The issue of whether or not Knoxville's plant has been correctly placed on restricted status cannot, however, be placed before the Board in a variance petition, although the Board will consider that fact as it pertains to Petitioner's hardship and to harm to the environment.

The hardship claimed by Knoxville is the possible loss of tax revenue and employment should the variance be denied and should the owners of M and R Oil Company (the proposed restaurant facility operators) subsequently decide to abandon their proposed restaurant. Knoxville alleges a severe unemployment situation in the city and points out that the proposed restaurant may employ as many as 50 people. In addition, a number of citizens and two state representatives have voiced support of the proposed restaurant.

The Agency argues that the hardship experienced by the city is precisely that which an imposition of restricted status is designed to accomplish, e.g., an impetus for improvement. The Agency presented evidence from Knoxville homeowners, who generally testified to problems with sewer backups during wet weather and the pumping of raw sewage out of manholes and into ditches to relieve the surcharge condition. In addition, the Agency presented evidence that 731 citizens of Knoxville signed a petition requesting that no more connections be allowed to the sewer system until the sewer problems in Knoxville had been corrected.

The Board finds that Knoxville has failed to prove that an arbitrary or unreasonable hardship would occur should their variance petition be denied. The potential loss of revenue and jobs to Knoxville is not sufficient to counterbalance the addition of further burdens to an existing surcharging sewer system and a hydraulically overloaded sewage treatment plant.

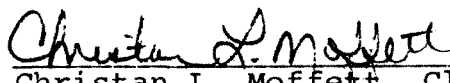
This Opinion constitutes the findings of fact and conclusions of law of the Board in this matter.

ORDER

The variance request of the City of Knoxville for relief from Rule 962(a) of Chapter 3, the Board's Water Pollution Control Regulations, 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 were adopted on the 30th day of October, 1980 by a vote of 5-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board