

ILLINOIS POLLUTION CONTROL BOARD
September 21, 1978

ZIMCO ENTERPRISES, DIVISION)
of ZIMCO METALFAB, INC.,)
)
Petitioner,)
)
v.) PCB 78-104
)
ENVIRONMENTAL PROTECTION AGENCY,)
)
Respondent.)

MR. ROBERT F. KAUCHER, MEYER AND KAUCHER, APPEARED FOR THE PETITIONER;
MR. REED NEUMAN, ASSISTANT ATTORNEY GENERAL, APPEARED FOR THE
RESPONDENT.

OPINION AND ORDER OF THE BOARD (by Mr. Dumelle):

Petitioner filed this variance petition pursuant to an Agreement to Settle in a related enforcement proceeding, PCB 77-276. Petitioner is requesting a variance from Rules 604(b) and 962 of the Board's Water Regulations. The parties have jointly waived a hearing in this matter.

Early in 1975, Petitioner constructed two sewer extensions in the City of Highland: one 62-foot, 8-inch extension to serve one family and, one 480-foot extension to serve eight families living in two 4-family units. Petitioner constructed these extensions without applying to the Agency for the required permits, but did receive authorization for this construction from certain Highland city officials. The construction and use of these extensions are also the subjects of the enforcement proceeding against Petitioner.

Highland's sewage treatment plant (STP) is severely overloaded and has been on Restricted Status since 1969. Highland is currently expanding its STP, and completion is scheduled for sometime during the summer of 1978. The Board is very familiar with the problems created by Highland's Restricted Status since it recently reviewed a similiar variance petition in Ralph Korte Construction Co., Inc. v. EPA, PCB 78-103; July 20, 1978 (hereinafter cited as Korte). As the Board noted in Korte, it is uncertain whether the City of Highland will be taken off Restricted Status with the completion of the new STP. If the Restricted Status were removed however, this variance would become moot.

In Korte, the Board noted that Petitioner Korte had constructed sewer extensions in flagrant disregard of Board rules. Nevertheless, the Board felt constrained to grant the variance, because a denial would have imposed a real hardship upon the nine small businesses which innocently used the unlawfully constructed sewer extensions.

A similiar situation exists in the case at hand. Nine families have been using the sewer extensions for the past three years, and they would be put to great financial expense if they were forced to disconnect. The estimated cost of \$2,400 per family for the disconnection, replacement septic systems, and reconnection (upon completion of the new STP) cannot be justified in light of the imminent completion of the new STP. The Agency noted in its Recommendation that environmental degradation occurred when the extensions first went into use, but, with the completion of the new STP, environmental degradation should be discontinued.

The Board must emphasize, as we did in Korte, that this variance is being granted because of the real hardship which would be imposed upon the users of these extensions should they be forced to disconnect, and not because of any self-imposed hardship on the Petitioner. Granting of this variance should not be construed as Board approval of Petitioner's course of action. Indeed, we find Petitioner's reliance upon the City's authorization naive at best. No city official has ever been able to grant variances from the Board's Regulations. Cinnamon Creek Association v. EPA and Thomas I. Simpson v. Cinnamon Creek Association, PCB 72-377, 368; 5-597.

In balancing hardship and environmental harm, the Board finds that the granting of the variance from Rule 962 is warranted, but a variance from definitional Rule 604(b) is unnecessary.

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

ORDER

It is the Order of the Illinois Pollution Control Board that:

1. Petitioner's request for a variance from Rule 604(b) of Chapter 3 is dismissed.
2. Petitioner's request for a variance from Rule 962 of Chapter 3 is granted, subject to the following conditions:
 - a. Petitioner shall file a thorough, complete application for an operating permit with the Agency within 60 days of this Order.
 - b. Petitioner shall modify the sewer extensions to conform to the design, operation and maintenance criteria of the Board, if such modifications are deemed necessary by the Agency.
 - c. Within 45 days of the adoption of this Order, the Zimco Enterprises, Division of Zimco Metalfab, Inc. shall execute and forward to the Illinois Environmental Protection Agency, 2200 Churchill Road, Springfield, Illinois 62706 a Certification of Acceptance and Agreement to be bound to all terms and conditions of this Order. The 45 day period shall be held in abeyance during any period this matter is being appealed. The form of said certification shall be as follows:

CERTIFICATION

I (We), _____ having read and fully understanding the Order of the Illinois Pollution Control Board in PCB 78-104 hereby accept said Order and agree to be bound by all of the terms and conditions thereof.

SIGNED _____

TITLE _____

DATE _____

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 21st day of September, 1978 by a vote of 4-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board