ILLINOIS POLLUTION CONTROL BOARD September 6, 1973

JAMES F. CHAPS)))	
ν,)))	PCB 73-229
ENVIRONMENTAL PROTECTION AGENCY)))	

OPINION OF THE BOARD (by Mr. Dumelle)

This opinion is in support of an order of the Board granting the variance which was entered August 23, 1973.

Petition for variance to connect to the McHenry Shores Water Company system in McHenry County was filed May 29, 1973. No public hearing was held.

Petitioner alleges that "the understanding was that the water problem in McHenry Shores would be settled." Permit was obtained on August 20, 1972 from the Village of McHenry Shores and the house, at 1207 South Hilltop Boulard is evidently now completed and ready for resale and use. Letters are attached to the petition from the Village asking that the "ban of June 1972" be lifted (May 25, 1973); from the Universal Tank & Iron Works, Inc. that they will complete the project by September 11, 1972 (May 21, 1973); and from Northern Illinois Utilities, Inc. verifying the tank construction project and promising to submit plans and a permit application to the Agency.

The Agency states that the permit from the Village was issued August 30, 1972 (petitioner states August 20, 1972) about two months after the Board order in McHenry Shores Water Company v. EPA, PCB 72-137 on June 29, 1972. The Agency also states that on July 27, 1972 an employee of Mr. Chaps' contractor, signed statements to show that he knew of the problems in connecting to the water system.

The original recommendation of the Agency, filed June 25, 1973, was for denial. The Agency points out that the water company has not been brought into compliance with the Board order as of the date of the recommendation (June 19, 1973). Also that no plans have been received by Agency.

On August 23, 1973, the date on which the order was issued, the Agency filed an amended recommendation and recommended a grant. It stated that plans and specifications for the new elevated water storage tank had been received and that the required construction permit had been issued on August 17, 1973. The Agency goes on to

state that final work on the tank superstructure is expected to be completed by September 11, 1973 and this will bring the system into compliance with the Board order in PCB 72-137.

While a great deal of mention has been made of the Board "order" in PCB 72-137 the fact is that no Board "ban" exists on connections to the water system. The opinion in PCB 72-137 points out that additional connections would cause violations of the regulations on water quality and quantity. This the Agency is not to allow and thus the present status can be interpreted as a potential violation from which the Board by granting a variance can give a shield from prosecution.

Since Mr. Chaps' building is for resale it is quite possible that it will not be occupied between the date of our order (August 23, 1973) and the date of the system completion (September 11, 1973). In any event, we grant the variance from the Water Supply Regulations to connect to the water system.

Mr. Odell abstains.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion was adopted on the day of September, 1973 by a vote of 3-0

Christan L. Moffett, Clerk
Illinois Pollution Control Board