ILLINOIS POLLUTION CONTROL BOARD August 22, 1972

CINNAMON CREEI	ASSOCIATE:	3)	
v.))	#72-340
ENVIRONMENTAL	PROTECTION	AGENCY))	

Opinion & Order of the Board (by Mr. Currie):

This petition seeks a variance to allow the connection of a new apartment complex to sewers in Waukegan despite our order forbidding such connections in League of Women Voters v. North Shore Sanitary District, #70-7 (March 31, 1972). The petition alleges expenditures for land purchase and for building plans incurred before the ban was imposed, facts which we have found insufficient if proved to support a variance since the enjoyment of those expenditures is not foregone but merely deferred. See, e.g., Monyek v. EPA, #71-80 (July 19, 1971); Wagnon v. EPA, #71-85 (Aug. 5, 1971). It is further alleged that additional sums were spent after the ban was imposed in reliance upon the Sanitary District's erroneous interpretation of our order as not applying if a building permit had been issued before the ban. See Wachta v. EPA, #71-77 (July 12, 1971); Glovka v. NSSD, #71-269 (Feb. 17, 1972). In Glovka, because of expenditures in good faith reliance on the advice of municipal officials who should have known better, we held an individual who had made an illegal connection would not be required to disconnect; the present case asks us, as does Cook v. EPA, #72-178, which is to be decided August 29, to apply or extend that reliance principle here. The large number of apartments here involved (nearly 250) increases the hardship if a connection is denied and also the pollution is one is granted; it may bring about a greater duty of inquiry into the legality of a connection, since we cannot delegate authority to local officials to undermine or repeal our orders. The issue is a difficult one on which a hearing would be appropriate.

However, the petition overlooks our orders in #71-343, North Shore Sanitary District v. EPA (Jan. 31 and March 2, 1972), which allowed a number of additional connections to Waukegan sewers based upon treatment plant improvements.

There is here no allegation that permits have been sought and denied, or that the apartments are tributary to overloaded sewers that are exempt from the #71-343 variance. There is only the allegation that a hypothetical refusal of a permit by the Agency would cause unreasonable hardship. In view of the relaxation of the ban in #71-343, without an allegation that there has been such a refusal there is no indication that a variance is needed. The petition is therefore dismissed for failure to allege facts sufficient, if proved, to justify the relief sought. See, e.g., Chesterfield Development Corp. v. EPA, #71-378 (March 2, 1972).

I, Christan Moffett, Clerk of the Pollution Control Board, certify that the Board adopted the above Opinion & Order this 22nd. day of August, 1972, by a vote of

Christen Myfoth