

ILLINOIS POLLUTION CONTROL BOARD
August 29, 1972

MARK E. COOK)	
)	
)	
v.)	PCB 72-178
)	
ENVIRONMENTAL PROTECTION AGENCY)	
)	
COMMUNITY UNIT SCHOOL DISTRICT NO. 60)	
LAKE COUNTY, ILLINOIS)	
)	
)	
v.)	PCB 72-223
)	
)	
ENVIRONMENTAL PROTECTION AGENCY)	
)	

DISSENTING OPINION (by Mr. Dumelle)

My reason for dissenting in the 4-1 decision to deny this variance is the extreme hardship now inflicted upon Mr. Cook.

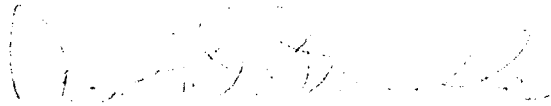
He has a \$30,000 house which he cannot sell (R.13); he has debts of \$13,550 to subcontractors (R.15, 22, 26); he has a wife with malignant cancer (R. 23); he has had to sell his own home and move into one of his model homes (R. 40). What the denial of this variance may well do is to bankrupt this small businessman.

The variance procedure involves the weighing of costs to the public versus the costs to the individual. I do not think the variance procedure contemplates financial bankruptcy except when absolutely necessary in extreme cases of pollutional hazards. Since the Board itself in similar cases of single house discharges (also to overloaded sewers in Waukegan) has granted them (PCB 72-223, PCB 72-202, cited in majority Board opinion of this case) it would appear that "extreme pollutional hazard" does not exist. The Board has opted not to bankrupt a congregation of a rabbi's services nor to bankrupt high school youths of a vocational education. Why then should it bankrupt a small businessman?

What we must realize in these three related cases is that the effect of each grant is the same. Because in the Cook case the overflow is graphically

described (R. 82, 99) does not mean that similar or worse conditions do not exist in the other two cases. We must assume that an "overloaded sewer" is just that. And since grants have been made in two other cases with presumably the same or worse consequences it seems to me that Mr. Cook should have also received a variance.

In future cases involving Waukegan sewers it is apparent that the City of Waukegan ought to be joined as a party. The Board would then receive information regarding the speed at which these overloaded sewers will be corrected and could enter such orders as are appropriate. The present indirect way of speeding up City of Waukegan sewer correction work by occasional variance denials is most unsatisfactory and unfair to the individual concerned.



Jacob D. Dumelle
Board Member

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Dissenting Opinion was submitted on the 27th day of August, 1972.



Christan L. Moffett, Clerk
Illinois Pollution Control Board