

Originally, Maisel was going to buy land from a Mr. Kenneth Smitala of 1524 West Sheridan Road in Waukegan, Illinois, who is the owner of a gas station and a truck and car wash on Belvidiere Road. Maisel, however, did not purchase the land from Smitala, but did enter into an agreement with Smitala that for a fee Smitala would agree to close his truck and car wash, if and when Maisel was granted the right to connect its sanitary system onto the District's facilities. Smitala further agreed that if he were to disconnect his sewer line, he would not open his truck and car wash again until he was granted permission by the District to connect to its facilities, as any new person seeking connection would receive permission. Smitala computed that his truck and car wash has been used over 35,000 times for the period between January 1, and April 15, 1971. Each time it is used, it runs for 3-3/4 minutes and uses 3-1/2 gallons of water per minute. This means that during this period Smitala used 482,380 gallons of water. For those 105 days, then, the truck and car wash operation used 11,542 gallons per day. This, he said, is a typical period for use of his facility.

Maisel's witness calculated that the daily flow from the K-Mart store into the sanitary system would be 3397 gallons. The only flow to the system would be sanitary wastes. All of the wastes from the other operations in the store will be disposed of differently. The waste from the automotive shop will be collected in a holding tank and the waste from the restaurant and butcher shop will collect in a grease trap. Both the grease trap and the oil holding tank will be emptied by a scavenger service and the contents disposed of by the scavenger.

The basis for granting a variance under the Environmental Protection Act is that compliance with the law would impose "an arbitrary or unreasonable" hardship. Here Maisel seeks a variance from an order of the Board entered on March 31, 1971, in which the Board barred any sewer connections to the already overloaded facilities of the North Shore Sanitary District. See Paragraph 7 of the Order in the League of Women Voters of Illinois, et al v. North Shore Sanitary District, PCB 70-7, et seq, decided March 31, 1971. In considering whether there is an "arbitrary or unreasonable" hardship, the Board has said many times that it will balance the public good against the private good, but will weigh heavily in favor of the public good. Here, on balance, we believe that the public will be benefited by the novel scheme proposed by Maisel. In the first place, the waste load to the Clavey treatment plant will be lessened. The truck and car wash accounts for more than 11,000 gallons of waste per day, and the new K-Mart estimates that it will only discharge about 3400 gallons per day into the District's sewer system. Testimony in the North Shore Sanitary District case,

supra, revealed that the Clavey Road plant was hydraulically overloaded and any relief provided to that plant will indeed be a benefit, not only to the Skokie River, but to the neighbors as well.

In the second place the Clavey plant will also be aided because of the change in the type of waste that would be discharged into the sewer system. The truck and car wash discharges detergents and wax while the K-Mart discharges solely sanitary waste. The latter is, according to a witness, "easier to treat".

In the third place, the community will be benefited because of the increase in sales tax revenues which will be gained by the City and the increased number of jobs at the K-Mart. Almost 200 people will be employed at K-Mart, while the truck and car wash is a self service system and employs very few.

All in all, the Maisel plan is a good one. We will, therefore, grant the variance, but there will be some conditions imposed. The first condition will be that Smitala will be made a party to this case and therefore be directly bound by the order of the Board to disconnect his discharge line to the sewer. While we do not discount the fact that Smitala has by contract agreed to disconnect his discharge line, we feel that this is an obligation he should make with the entire State of Illinois and not just one other person.

Another condition will be that Smitala agree to physically disconnect his line to the sewer. He testified that this was possible, and to do so will protect against those in the future who may want to surreptitiously reconnect at some future time.

Also, Smitala will be required to post a bond with the State guaranteeing that neither he, nor his assigns, will connect to the District sewer without first getting a permit from the District, and other agencies who may have jurisdiction.

This opinion constitutes the findings of fact and conclusions of law of the Board.

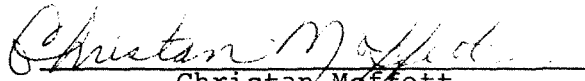
O R D E R

Upon consideration of the evidence in the record of proceedings, the petition for variance of Maisel is hereby granted, subject to the following conditions:

1. The wastes to be discharged by the K-Mart store shall be general sanitary wastes in the volume indicated in the record, and shall not include discharges from the restaurant, butcher shop and the auto accessories store.

2. Smitala shall be made a party to this case and he shall agree to be bound by the order of this Board as is applicable to him. He shall also agree that this order shall be binding on his heirs and assigns.
3. The K-Mart discharges shall not occur until Smitala has disconnected his truck and car wash discharge line from the sewer. Smitala shall take those steps outlined in the record to physically separate his sewer line from that of the District. Smitala shall not discharge any wastes whatsoever into that line until he has received a permit from the North Shore Sanitary District to reconnect his sewer line.
4. Smitala shall post a bond in the amount of \$50,000 with the Environmental Protection Agency guaranteeing that he will comply with the order of this Board, herein.

I, Christan Moffett, Acting Clerk of the Pollution Control Board, certify that the Board adopted the above Opinion and Order this 9 day of December, 1971.


Christan Moffett,
Acting Clerk