

ILLINOIS POLLUTION CONTROL BOARD  
July 7, 1977

K.M. ROUND LAKE BEACH DEVELOPMENT )  
COMPANY, )  
 )  
Petitioner, )  
 )  
v. ) PCB 77-131  
 )  
 )  
ENVIRONMENTAL PROTECTION AGENCY, )  
 )  
Respondent. )

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

On April 19, 1977, Petitioner submitted two petitions for Variance (PCB 77-117 and 77-118) which were dismissed and consolidated into this proceeding. Petitioner is seeking alternative relief. A variance is sought from Rule 962 of Chapter 3: Water Pollution of the Board's Rules and Regulation to allow connection of a proposed commercial development to the Village of Round Lake Beach sewer system and the Round Lake Sanitary District sewage treatment plant. In the alternative, a variance is sought from Rules 203(c) and 962 to allow the construction and operation of a package sewage disposal system to serve the proposed development.

Rule 401(b) of the Board's Procedural Rules states that Petitions for Variance must state specifically whether a hearing is requested or waived. This consolidated Petition did not fulfill this requirement.

On June 10, 1977 the Agency filed its Recommendation that this Variance be denied, and on July 5, 1977 an adjoining landowner filed an objection to the Petitioner's second alternative for relief. In Material Service Corporation v. Environmental Protection Agency and Pollution Control Board, 41 Ill. App.3d 192, 354 N.E.2d 37 (1976), the Illinois Appellate Court addressed a similar situation in which the Agency filed a recommendation of denial of the Variance based on factual allegations contradicting those in the Petition, and the Board then denied the Petition without a hearing. The Court held that the recommendation must be considered an "objection" to the Petition and that, under The Act and Procedural Rules, the Board could not deny the Petition on the merits without a hearing.

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

ORDER

It is the Order of the Pollution Control Board that the Petition for Variance filed by the K.M. ROUND LAKE BEACH DEVELOPMENT COMPANY on May 2, 1977 be and is hereby dismissed without prejudice.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order, were adopted on the 7th day of July, 1977 by a vote of 5-0.

Christan L. Moffett sk  
Christan L. Moffett, Clerk  
Illinois Pollution Control Board