## October 19, 1978

WILLOWBROOK UTILITY COMPANY,	)
Petitioner,	) )
v.	PCB 78-194
ENVIRONMENTAL PROTECTION AGENCY,	) )
Respondent.	<i>)</i> )

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

Petitioner is requesting a variance from the requirements of Rule 962(a) of Chapter 3: Water Pollution of the Board's Rules and Regulations. The Agency has recommended that the request be granted subject to certain conditions. No hearing was held.

Petitioner operates a sewage treatment plant which serves a group of subdivisions in eastern Will County. The plant consists of two package plants which have the total hydraulic capacity to treat 160,000 gallons per day. This hydraulic capacity translates to a design capacity of 1600 population equivalents (P.E.). The Agency has recently issued Petitioner a "construct only" permit for an additional 676 P.E. In a condition to this permit the Agency indicated that no operating permit would be issued for this sewer extension until additional capacity is added to the treatment plant. Petitioner admits that this extension will enable the plant to exceed its design capacity by 556 P.E. but feels that it should not be restricted at this time since the average flow is only 36,000 gallons per day. Petitioner is asking that connections to its treatment plant be limited by actual loadings rather than permitted loadings.

Petitioner is not seeking a variance from any of the Board's water quality or effluent standards. Rather Petitioner is seeking a variance from the Agency's guidelines which provide that unused capacity shall be determined by examining previously permitted loadings. These Agency guidelines become Board standards by virtue of Rule 962 making relief in the form of a variance necessary.

Petitioner plans to initiate construction of a "Second Addition" to its treatment plant when the present plant reaches 90% capacity. This is not expected to occur until 1986. In the meantime Petitioner proposes to make quarterly reports to the Agency on the number of new service connections and to set up an

escrow account of approximately \$450,000. to finance the necessary construction.

The Board finds that the circumstances of this case merit special attention. Petitioner's treatment plant receives only sanitary sewage and no industrial or commercial wastes. Homes are constructed individually. Consequently, the loading can be predicted accurately. Denial of a variance in this instance would require Petitioner to construct additions to its treatment plant which might not be used for eight years or to build on only those lots which have permitted sewer service. Either alternative would impose economic hardship without any resulting environmental improvement. This imbalance renders the hardship arbitrary and unreasonable.

The Board finds that the quarterly reporting form attached as Exhibit C is sufficient to inform the Agency of development of subdivisions. The escrow agreement attached as Exhibit D is sufficient to insure that necessary construction will be financed. The Agency's request to be advised annually of the escrow balance is reasonable. Since this variance is limited to a term of five years by Section 36(b) of the Act and no sewage plant or interceptor construction is contemplated for eight years, a firm timetable for compliance can be addressed in a future proceeding.

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 Petitioner be granted a variance from the requirements of Rule 962 of Chapter 3: Water Pollution of the Board's Rules and Regulations until September 30, 1983 subject to the following conditions:

- 1) Petitioner shall submit quarterly reports to the Agency in the form attached as Exhibit C to Petitioner's response.
- 2) Within 30 days of the date of this Order, Petitioner shall submit a copy of an executed escrow agreement to the Agency in the form attached as Exhibit D to Petitioner's response.
- 3) On July 1 of each year until the termination of the escrow agreement Petitioner shall submit a report of the escrow balance certified by the escrow agent.
- All reports and documents referenced in conditions 1-3 shall be sent to Manager, Permits Section, Division of Water Pollution Control, Illinois Environmental Protection Agency, 2200 Churchill Road, Springfield, Illinois, 62706.

- on Petitioner's sewage treatment plant reaches 90% of its actual capacity, Petitioner shall initiate construction, after receipt of the necessary Agency permits, of a second addition to its plant or of an interceptor sewer to connect its collection system to an areawide waste treatment facility.
- Within 45 days of the date of this Order, Petitioner shall execute and forward to Manager, Enforcement Programs, Illinois Environmental Protection Agency, 2200 Churchill Road, Springfield, Illinois 62706 a Certificate of Acceptance and Agreement to be bound to all of the terms and conditions of this variance. This 45 day period shall be held in abeyance during any period this matter is being appealed. The form of the Certificate shall read as follows:

## CERTIFICATION

I (We),		having
Pollution Control Board	ding the Order of the Illing in PCB 78-194 hereby accept be bound to all of its term	t
conditions.		
	SIGNED	
	TITLE	
	DATE	
I, Christan L. Moffett, Control Board, hereby certify adopted on the 19 to by a vote of 4-0	Clerk of the Illinois Pollithe above Opinion and Order day of	
	Christan L. Moffety Cleristan Pollution Contro	