

ILLINOIS POLLUTION CONTROL BOARD
October 10, 1972

FIRST NATIONAL BANK OF SPRINGFIELD,)
Trustee of Trust No. 3010)
)
)
 v.) # 72-301
)
)
 ENVIRONMENTAL PROTECTION AGENCY)

Mr. Robert Cohen, Attorney, for First National Bank of
Springfield, Trustee of Trust No. 3010

Mr. Thomas J. Immel, Assistant Attorney General, for the
Environmental Protection Agency

Opinion of the Board (by Mr. Currie):

This is another Springfield sewer connection case, see Illinois National Bank of Springfield v. EPA, #72-300 and 72-307, 5 PCB ___ and ___ (Oct. 3, 1972), resulting from the Environmental Protection Agency's decision to refuse permits to connect to certain Springfield sewers because both the sewers and the treatment plant to which they led were seriously overloaded.

This case concerns a housing development in southwest Springfield. 144 units were already under construction at the time of the ban, and a number have been completed and occupied. An additional 76 units are not yet under construction (R. 9, 51-52, 59, 62).

Since the filing of this petition the City and Sanitary District have undertaken an extensive program of sewer improvements, described in our opinion in #72-300, which has led the Agency to agree to issue permits allowing construction, with connection to be made upon completion of treatment plant expansion in the spring of 1973. There is no evidence or allegation that connections will be needed before then for the units not yet under construction (see R. 73), and no suggestion that such an install-only permit will be insufficient to fulfill the petitioner's needs as to those units. As in #72-300, therefore, the petition is moot with regard to units not under construction when the ban was imposed.

With respect to the units that were under construction when the ban was imposed, the case is substantially similar to #72-307, in which we allowed connection because of the extensive commitment in good faith reliance on the ability

to make a connection and because of the short time before correction of the treatment plant problem. However, we note that in this case the petitioner took the law into its own hands and made the connection for completed units without a permit, well knowing that a permit was required (R. 70-71). That we ultimately allow use of the connection because of hardship does not justify such flagrant disregard for the permit system. We cannot simply ignore this behavior by granting an unconditional variance to benefit from the wrong. To deny the variance would be one alternative, as it would leave the petitioner open to possible enforcement proceedings that would very likely result in money penalties. To avoid unnecessary multiplicity of proceedings we think it proper to grant a partial variance, exonerating the petitioner from a cease-and-desist order but not from money penalties, by conditioning the grant of a shield from further prosecution on the payment of a penalty of \$2000 to protect the integrity of the permit system. Cf. Marquette Cement Mfg. Co. v. EPA, #71-23, 1 PCB 145 (Jan. 6, 1971); EPA v. High Lake Poultry, Inc., #72-198, 5 PCB ___ (Oct. 3, 1972).

ORDER

1. With respect to buildings not under construction as of the date of the sewer connection ban the petition is hereby dismissed as moot.
2. Variance is hereby granted to allow the connection of units under construction on the date of the ban to municipal sewers, on condition that within 35 days after receipt of this order the petitioner shall pay to the State of Illinois the sum of \$2000 as a penalty for making connections without a permit. Payment shall be made to: Fiscal Services Division, Illinois Environmental Protection Agency, 2200 Churchill Drive, Springfield, Illinois 62706.
3. Failure to comply with said condition shall render this variance null and void.

I, Christan Moffett, Clerk of the Pollution Control Board, certify that the Board adopted the above Opinion this _____ day of October, 1972, by a vote of _____.