

ILLINOIS POLLUTION CONTROL BOARD

February 7, 1974

IN THE MATTER OF:)
)
THE PETITION FOR VARIANCE OF:) PCB 73-431
)
VERN ANDERSON)

OPINION AND ORDER OF THE BOARD (by Dr. Odell)

Petitioner, Vern Anderson, filed a petition for variance, which was received by the Illinois Pollution Control Board (hereinafter Board) on October 11, 1973. Petitioner seeks relief from Order Nos. 6(c) and 6(d) of North Shore Sanitary District v. Environmental Protection Agency, 71-343 (3 PCB 541, 558) in order to obtain a sewer connection permit for a 2-unit apartment building located at 1112 McAree Road, Waukegan, Lake County, Illinois. This request for a variance resulted from a Notice of Violation to Petitioner on August 31, 1973, from the Lake County Health Department, that effluent from Petitioner's septic system was "being discharged to the ground surface," which was "in violation of Lake County Health Code ordinances" and "a hazard to public health." This Notice of Violation also instructed Petitioner to make repairs to his septic system to prevent effluent discharge to the ground surface or petition for a variance for a sanitary sewer connection.

On October 18, 1973, the Board ordered the Petitioner to file additional information indicating whether the proposed connection would be tributary to a sewer with inadequate transport capacity. On November 6, 1973, the Board received a response from the Petitioner indicating that (a) the proposed connection would be tributary to the Judge Avenue sewer and (b) the septic system does not function properly "because of the lowness of the ground."

On December 13, 1973, the Board requested from the Petitioner more detailed information on the topography of the subject land, with special reference to the availability of land of such elevation into which a new septic tank distribution system could be installed in such a manner as to achieve adequate percolation and avoid health hazards, including during wet periods. Information on the feasibility of such changes in the septic distribution system was also requested.

On November 29, 1973, the Board received from the Environmental Protection Agency (hereinafter Agency) a Recommendation concerning the variance request by the Petitioner. Wastes from the proposed sewer connection would be transported to the Waukegan sewage treatment plant via the Judge Avenue sewer. The following data from the Monthly Operational Reports indicate the performance of the Waukegan sewage treatment plant:

<u>Date</u>	<u>Flow (MGD)</u>	<u>BOD (mg/l)</u>	<u>Suspended Solids (mg/l)</u>
September, 1973	16.13	6	32
August, 1973	13.65	30	38
July, 1973	14.53	28	51
June, 1973	17.16	42	50
May, 1973	21.56	26	40
April, 1973	22.60	23	35
March, 1973	21.49	36	54
February, 1973	16.68	36	52
January, 1973	18.85	31	42
December, 1972	16.46	17	40
November, 1972	20.03	20	26
October, 1972	23.50	21	29

In its Order of January 31, 1972, as amended March 2, 1972, in North Shore Sanitary District v. Environmental Protection Agency, PCB 71-343, the Board granted the North Shore Sanitary District (hereinafter District) a variance from Order No. 7 of PCB 70-7, -12, -13, and -14. Specifically, the Board granted the District permission to add a total of 13,333 population equivalents to the sewers tributary to the Waukegan sewage treatment plant. The above variance was extended by the Board to March 2, 1974, in PCB 72-451, thereby allowing the District to continue allowing connections to the waukegan sewage treatment plant.

However, subparagraphs 6(c) and 6(d) of the above-mentioned Order, PCB 73-343, imposed the following relevant conditions on the issuance of permits:

c. no connections shall be allowed if any part of the down-stream sewer system is incapable of adequately transporting the additional or new waste to the District's treatment works;

d. within 30 days of the entry of this order, the Agency shall indicate to the District those sewers or sewer lines which it finds incapable of adequately transporting wastes; the District shall not approve any permits which would add or increase any waste source to any sewer line or sewer so designated.

The allotment of sewer connections has not been exhausted for the Waukegan sewage treatment plant, and ordinarily the Petitioner could be issued a permit out of the remaining allotment. However, the Agency indicates that the Judge Avenue sewer is "hydraulically overloaded," and is "subject to excessive flows from storm water runoff during periods of wet weather. This runoff results in the bypassing of untreated wastes into Yeoman Creek and in the flooding of basements in the area. Therefore, connection permits cannot be issued by the District and the Agency because of the inadequate transport capacity of the sewer to which the subject building would be tributary." According to the Agency, "the City of Waukegan presently has no definite plans to correct the existing problem with and increase the hydraulic capacity of the Judge Avenue sewer."

Petitioner's hardship relates to the inadequacy of the septic system presently serving the building, and especially to the health hazard. The Board has granted a variance in those cases where a petitioner has shown that a public health hazard exists in regard to the operation of a septic system and this health hazard cannot be eliminated through improved maintenance or relatively minor repairs of the system. (See e.g. Elsa J. Miller v. Environmental Protection Agency, PCB 73-43; James Clark v. Environmental Protection Agency, PCB 73-37; Winsor v. Environmental Protection Agency, PCB 71-334; and Robert J. Bartell v. Environmental Protection Agency, PCB 72-372). The Board finds that the Petitioner has failed to show that the health hazard cannot be eliminated through improved maintenance and relatively minor repairs to the system, that the possibility of such repairs has been investigated, or that unsuccessful repairs have been attempted in the past. The Petitioner has failed to provide more information concerning some of these points in response to the Board Order of December 13, 1973. On January 4, 1974, the Petitioner filed a verbal 60-day waiver in this matter and agreed to submit additional information, but none has been received by the Board. Since the Petitioner has not shown that he has explored possible alternatives to solve his septic system problem, the Board is not justified in granting this variance for a sewer connection. Granting this variance would shift Petitioner's problem to others attached to the Judge Avenue sewer, especially in flooded basements during periods of excessive runoff of storm water. An alternative solution to this problem is for the City of Waukegan to rehabilitate or enlarge the Judge Avenue sewer so that it can properly service the Petitioner plus others in the neighborhood who have flooded basements during heavy rains.

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

ORDER

IT IS THE ORDER of the Pollution Control Board that
Petitioner's request for variance is denied without prejudice.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control
Board, certify that the above Order was adopted on this 7th
day of February, 1974, by a vote of 5 to 0.


Christan L. Moffett, Clerk