



June, 1973, but that it had been refused (R-60). NSSD applied again in August, 1973 (R-63), but at the time of the hearing, EPA was still considering the plan. EPA had issued a permit to construct a force main from the Skokie Valley Interceptor to the Middle Fork Interceptor sewer at a point north of the Petitioner's proposed trunk sewers (R-89). That section of the Middle Fork Interceptor would be built subsequent to completion of the NSSD project in the Lake Forest area.

A witness for EPA indicated that EPA has a policy of issuing "install only" permits only after the party installing the sewer, which the tributaries flow into, has obtained a permit and signed contracts (R-71). At the time of the hearing, there was not a permit for the Middle Fork Interceptor and construction contracts had not been signed (R-76).

Subsequent to the hearing, the EPA granted a permit to NSSD to construct the Middle Fork Interceptor (Permit No. 1973-HB-2255 issued on November 9, 1973).

We hold that Petitioner has satisfied the test of Section 40 of the Act and should be issued a permit. While the policy of the EPA is a reasonable one, we believe it should not be applied here to restrain Petitioner. The following reasons support this conclusion.

First, the rationale behind the EPA policy will not be undermined if a permit is granted in this case. No undesirable environmental impact will result if permits are granted because "install only" permits will not generate increased pollution. An operating permit must be obtained from EPA before these facilities become functional. The second justification for EPA's "install only" permit policy is to save Petitioner financial loss (Paragraph 10 of Exhibit 6: Answer to the Appeal of Permit Denials). No evidence has been admitted to show EPA's legitimate interest in protecting the Petitioner from his own folly. We are mindful that the state has a wide interest in areas of the health, safety and welfare of its citizens, but since no evidence was given in this case to support this rationale, we must fall back on earlier Board opinions which stress that financial ineptitude is not the concern of the EPA. See Illinois National Bank of Springfield v. EPA, #72-300, 5 PCB 585, 587 (October 3, 1972). Third, although the contract for the Middle Fork Interceptor has not yet been signed, plans are sufficiently definite so that Petitioner should be entitled to install the pumping station and the Everett Road sewer improvements. The permit for Middle Fork has been issued, the Board and courts have ruled that the NSSD must construct the Middle Fork Interceptor, and immediate action by Petitioner Lake Forest will effect sizable savings. Because of these circumstances, the mere fact that a formal contract has not yet been signed for Middle Fork should not impede Petitioner in expeditiously completing its improvements.

ance of the North Chicago plant would be necessary to alter the sewer ban in this area, the Board believes that under the circumstances of the instant case a variance for the proposed single-family dwelling can be granted without jeopardizing the environment. 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 Petitioners, Mr. and Mrs. Clarence Tompkins, be granted a variance from Order 7 of League of Women Voters v. North Shore Sanitary District, PCB 70-7, 70-12, 70-13, and 70-14, to connect a proposed single-family residence to the North Chicago sewage treatment plant.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 15<sup>th</sup> day of November, 1973, by a vote of 5 to 0.

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