

ILLINOIS POLLUTION CONTROL BOARD
November 28, 1972

MARK E. COOK)
)
) #72-430
 v.)
)
 ENVIRONMENTAL PROTECTION AGENCY)

OPINION OF THE BOARD (BY SAMUEL T. LAWTON, JR.)

On August 29, 1972, in case #72-173, we denied a petition for variance filed by Mark E. Cook which requested permission to connect a single-family residence structure to facilities tributary to the Waukegan Sewage Treatment Plant of the North Shore Sanitary District. Although we had granted a partial lifting of our original sewer ban order with respect to the Waukegan plant, the sewer to which connection was proposed had been classified as overloaded by the Environmental Protection Agency and the original request accordingly denied.

We refused to grant the variance on the ground that petitioner's hardship was self-imposed and not of the magnitude to justify the variance allowance based on previous decisions, as set forth in our August 29, 1972 opinion. On October 3, 1972 in John W. Bender v. Environmental Protection Agency, #72-324, we granted a variance to the petitioner under circumstances not unlike those maintaining in the present case. The rationale of our allowance in Bender was that although the petitioner might have constructed his residence in the face of the sewer ban, gambling that it would be terminated or varied in time for him to connect, he did not have reason to contemplate at that time that once the sewer ban was partially lifted, the specific sewer to which connection was sought would be classified as overloaded. In each case, the petitioner took a calculated risk when he began construction with knowledge that no connection could be made until the ban was lifted, but that the ban was initially imposed on the basis of inadequate facilities to the sewage treatment plant and not on the character of the sewer to which connection was sought. While our decision of March 2, 1972¹ did authorize additional connections on the basis of treatment plant improvements, neither Bender nor Cook could foresee that when construction began, our later decision would limit relief from the ban on the ground that certain sewers later designated by the Agency were inadequate to transport their present waste loads to the plant for treatment. In both cases, the risk petitioners assume was the risk that treatment plant improvements would be delayed and

¹North Shore Sanitary District v. Environmental Protection Agency, #71-343, 5 PCB

not that an unforeseen and unrelated problem with the adequacies of the sewer itself might intervene. In both cases, a single house with limited waste is involved.

While we feel that Cook's reliance on statements of municipal officers to ignore the ban would not be justification for allowing the variance, Cook has made a demonstration of financial hardship and need for disposal of the property that are sufficient, in our judgement, to call for a reversal of our previous position, particularly in consideration of the Bender rationale. We do not find persuasive the Agency's distinction between the construction of Bender's home for his own use and Cook's for ultimate disposal. The hardship on Cook is manifest and the burden on the public in allowing the variance is minimal. Accordingly, we rescind our order of August 29, 1972 denying Cook's petition for variance, and by this order grant a variance to Cook allowing him to connect to facilities tributary to the Waukegan Sewage Treatment plant of the North Shore Sanitary District as requested in his petition.

IT IS SO ORDERED.

I, Christan Moffett, Clerk of the Illinois Pollution Control Board, certify that the above Opinion was adopted on the 28th day of September, 1972, by a vote of 5 to 3.

Christan J. Moffett