ILLINOIS POLLUTION CONTROL BOARD
July 11, 1974

VALOISE S. FAWCETT, Petitioner, vs. ENVIRONMENTAL PROTECTION AGENCY, Respondent.	)	PCB 74-101

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

On March 20, 1974, Valoise S. Fawcett filed a Petition For Variance. Petitioner filed an Amended Petition on April 25, 1974.

Petitioner seeks relief from an Agency imposed limitation on further sanitary sewer extension connections in an area tributary to the sewage treatment plant owned and operated by the Round Lake Sanitary District. This ban was imposed pursuant to Rule 921(a) of Chapter 3: Water Pollution Regulations of Illinois (Chapter 3). Petitioner seeks such relief in order to obtain a sewer connection permit for a proposed 11-unit apartment building to be constructed in Round Lake, Illinois.

The proposed connection would be to an existing lateral sewer, tributary to an 18-inch line, tributary to the 24-inch Bayview interceptor, tributary to the District's sewage treatment plant.

The treatment plant discharges to Squaw Creek, which provides a dilution ratio of less than one-to-one. Agency investigation has revealed that the Round Lake Sanitary District is presently producing an effluent with BOD and suspended solids concentrations of less than 20 and 25 mg/l as currently required by Rules 404 and 409 of Chapter 3. The Agency believes that the plant will be unable to meet the 4 and 5 mg/l requirements of Rule 404(f) on December 31, 1974, as required by Rule 409. The Agency notes that the plant is presently operating in apparent compliance with the requirements of Rule 405 of Chapter 3.

Even though there is an absence of apparent effluent violations, the plant is subject to extreme hydraulic overloading. In fact, the Agency believes that hydraulic overload may enhance effluent quality by dilution. The design average flow of the plant is calculated to be 1.6 MGD. The plant consistently receives flows in excess of design average. Bypassing to the plant's three-cell lagoon system occurs on a regular basis. There is no direct bypass to Squaw Creek. The precise amount of flow cannot presently be determined by the District or the Agency because of inadequate metering facilities for raw sewage intake.

The major problem concerning the District's system is the common occurrence of sewage overflows in an area downstream of Petitioner's proposed connection and upstream of the above-mentioned Bayview interceptor. It is estimated that flows of up to 10 MGD enter the system during wet weather and result in sewer surcharging, flooding, and surface flooding. Since early in 1972, the Agency has documented these conditions.

On May 11, 1972, the Agency officially informed the District that future issuance of permits would be contingent upon activities of the District and the Village of Round Lake to provide adequate treatment for all flows on a continuous basis and to correct the existing sewer system problems. The District and Village performed some work which was designed to correct the problems. The work met with very limited success. All parties apparently realized that the problem could be solved only by the construction of a comprehensive sewer upgrading project. On January 12, 1974, residents of the District approved a $600,000 bond issue for construction of the following:

a) 7202 feet of gravity sewers;

b) 7372 feet of force main;

c) 33 manholes;

d) 5 flow meters;

e) one lift station, wet well standby generator, and flow measuring chamber.

Construction of the sewer upgrading program has not yet begun nor has the District yet received a permit for such upgrading from the Agency.

The hardships alleged by Petitioner are solely financial in nature. To date, it is alleged that a total of $10,246.50 has been expended. Petitioner's use and enjoyment of the subject property is at most merely suspended and not terminated. Petitioner's plight is not unique, but rather "characteristic of virtually every property owner in an area affected by a sewer ban." Bruno Feige v. Environmental Protection Agency, PCB 72-192. We have held that economic hardship, standing alone, may not support the grant of a variance. Carson International v. Environmental Protection Agency, PCB 73-498.

It is clear from the petition that construction of the proposed apartment building has not commenced. We have held in a number of North Shore Sanitary District sewer ban cases that at least substantial steps toward completion of construction must have taken place before the date of the ban in order for the Board to find the requisite hardship and grant a variance. As we said in Monyek v. Environmental Protection Agency, (PCB 71-80) and in Feige v. Environmental Protection Agency, (PCB 72-192):

> "Undeniably, petitioner is confronted with some measure of inconvenience in this case. We cannot, however, view petitioner's plight as singular and therefore arbitrary nor can we commiserate to such a degree that we grant rather than deny this request. In cases where a house has been completely built

before the date of the order (March 31, 1971) or where substantial steps toward completion have been taken, we can clearly judge the hardship of non-connection to be unreasonable."

The Board has followed the logic of these decisions in other sewer ban cases similar to the present situation. Lobell and Hall v. Environmental Protection Agency, PCB 72-511, Springfield Marine Bank v. Environmental Protection Agency, PCB 73-348. In those cases where the Board has granted variances in sewer ban situations, some extreme hardship has been present of substantially greater magnitude than that alleged by Petitioner here: e.g., buildings already constructed and subject to vandalism coupled with almost certain mortgage forfeiture (Viking Investment Company v. Environmental Protection Agency, PCB 73-236); petitioners with very limited means would suffer a sever financial loss (Ronald H. and Carolyn Bower v. Environmental Protection Agency, PCB 73-273); a grossly overloaded school building needed more room (Meridian Community Unit School District #1 v. Environmental Protection Agency, PCB 73-349); and an outbreak of hepatitis which could have been caused by malfunctioning septic tanks (City of Silvis v. Environmental Protection Agency, PCB 74-88).

The Board has held that the question in every variance case is whether the hardship imposed on Petitioner far outweigh the hardships of the public if the variance is granted. Environmental Protection Agency v. Lingren Foundry Company, PCB 70-1. The balancing test in evaluating a variance petition is not an equal balance, but rather the benefits to the person seeking the variance must substantially outweigh the detriments to the community at large. Decker Sawmill v. Environmental Protection Agency, PCB 71-73. In the present case we have, on one hand, the Petitioner with a return on a $10,000 investment temporarily suspended; on the other hand, we have citizens who often find sewage in their basements and yards, thus being subject to severe health hazards. Petitioner has failed to allege a hardship which can be considered either arbitrary or unreasonable.

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

IT IS THE ORDER of the Pollution Control Board that the Petition For Variance of Valoise S. Fawcett be denied.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, does hereby certify that the above Opinion and Order was adopted on this 11th day of July, 1974 by a vote of 5-0.

Christan L. Moffett