

ILLINOIS POLLUTION CONTROL BOARD  
October 18, 1971

SCHOOL BUILDING COMMISSION )  
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 v. ) # 71-247  
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 ENVIRONMENTAL PROTECTION AGENCY )

Opinion of the Board (by Mr. Currie):

The State School Building Commission, as owner, applied for a permit to connect a new freshman high school building to an existing sanitary sewer in the Village of Flossmoor in Cook County. The permit was denied because the sewer is grievously overloaded in times of wet weather. The Commission, joined by the local school district as intervenor, has sought relief from the permit denial by petitioning us for a variance. The Environmental Protection Agency, which denied the permit on the ground that the law so required, asks that we allow the connection because not to do so would impose an unreasonable hardship on the students and others using the presently overcrowded school. We held a hearing in which many persons expressed their views, and after reviewing the record we agree that the variance should be granted.

The pollution to which the evidence in this case directs our attention is perhaps as serious as any we have yet seen. It is undisputed that infiltration from surface runoff in wet weather causes raw sewage in the sanitary sewers to back up into streets, yards, and basements, creating an intolerable and extreme health hazard. Responsibility for these sewers is vested in the Village of Flossmoor, which was not a party to this case although it presented evidence seeking to require additional measures to be taken as a condition of any variance we might grant.

Because the Village was not a party, and because the evidence is not complete as to what is being done about the underlying sewer problem and what, if anything, can be done to accelerate its solution, we cannot today order the Village to take action. It is clear, however, that something should be done to relieve the situation with the utmost dispatch. We think the Village would be well advised to intensify its efforts to limit infiltration. Similarly, we are not in a position on this record to assess the time schedule for ultimate elimination of the problem through construction of an interceptor sewer, but it is clear that the greatest priority must be given to this project. Raw sewage in people's basements and in the streets is not something we can view with complacency. We urge the Agency to take whatever further steps are necessary to

ensure that everything feasible is done to alleviate this situation on both an interim and a permanent basis. The Board stands ready to entertain any proceedings that may be brought to accelerate a solution.

The issue before us today, however, is whether or not to allow the new school to connect to the sewer. The building has just been completed and, except for the sewer connection, is ready for occupancy. In the meantime the students are crammed on a double-shift basis into the old school building, which is near the new one. It is undisputed that the quality of education is suffering considerably. The hardship on a large number of innocent students is great. If connecting the new school meant more raw sewage in people's basements, we should have a very difficult case indeed. But it seems to us clear from the evidence, as it does to the Agency, that to allow the connection will not materially alter the present load on the sewers. It is not as if nine hundred students were to be brought into Flossmoor who now go to school elsewhere. The same number of students will be going to school in Flossmoor whether or not the connection is allowed; the only difference will be that the load is distributed between two buildings instead of concentrated in one. This the overload, in our opinion, will not be significantly affected whether or not the variance is granted. Against the hardship to those needing the new school there is nothing to balance. Denying the variance would not help the situation.

Certain measures have been taken to help avoid infiltration; there is to be a replacement of a very leaky section of sewer and a retention pond to hold back some of the stormwater. The School District should take such additional measures as it can to minimize the extent of its contribution to the sewers, especially during rainy periods, such as for example limiting physical education activities requiring showers and the use of school facilities for activities unconnected with the school program. We shall leave the details of such measures to the District. The Village suggested at the hearing that a holding tank be installed and that the District truck its wastes to an adequate interceptor sewer. The evidence that this was not a satisfactory alternative was overwhelming, and we cannot require that it be done. See, e.g., the testimony of Agency engineer Thomas McSwiggin (R. 338-62) that a holding tank might cause an odor nuisance, would create safety problems, and would confer only a negligible benefit.

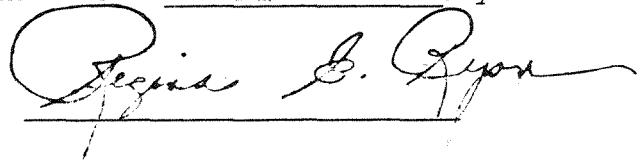
A procedural point requires mention. The question has been raised whether the appropriate proceeding before us is for a variance or for review of the Agency's permit denial. Strictly speaking, the issue in an appeal from the Agency's action is only whether or not the Agency erred in denying the permit; if the connection would have caused a violation of law the denial was correct and a variance request is in order. We do not intend to be sticklers for procedural purity in these matters and will construe a request for either appeal or variance as incorporating both grounds and will grant whatever relief is appropriate.

In the present case the Agency was right to deny the permit, but because of hardship and because no significant new load will be added to the system we grant the variance requested.

ORDER

1. A variance is hereby granted to permit connection of the new freshman classroom building to the sewer as described in the record.
2. The School District shall take such measures as it reasonably can to minimize its contribution to the sewer, especially during wet weather.

I, Regina E. Ryan, Clerk of the Pollution Control Board, certify that the Board adopted the above Opinion this 18 day of October, 1971.

A handwritten signature in cursive script, reading "Regina E. Ryan", written over a horizontal line.