

ILLINOIS POLLUTION CONTROL BOARD
November 10, 1976

MARY ANN NOWAK,)
)
 Petitioner,)
)
 v.) PCB 76-193
)
 ENVIRONMENTAL PROTECTION AGENCY,)
)
 Respondent.)

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

This matter comes before the Board on the amended variance petition filed on September 1, 1976 by Mary Ann Nowak seeking relief from Rules 962 and 602(a) and (d) of Chapter 3: Water Pollution Rules and Regulations. An Agency Recommendation was filed in this matter on October 21, 1976.

Rule 602(a) prohibits the installation of new combined sewers unless sufficient retention or treatment capacity is provided to ensure that no violation of the effluent standards occurs. Rule 602(d) sets the compliance date for the treatment of combined sewer overflows and Rule 962 establishes the Standards for Issuance for permits.

Petitioner seeks a variance to allow the issuance of an Agency permit to construct a combined sewer to serve ten single-family residences located in an area within Calumet City and the Metropolitan Sanitary District of Greater Chicago (MSDGC). All storm and sanitary flows generated in this area would flow to an existing 15-inch combined sewer. Ninety percent of Calumet City is served by combined sewers and there are no separated sewers proximate to the Petitioner's property. Petitioner alleges that a separation of sewers in this area would serve no purpose since both the storm and sanitary sewers would be connected to combined sewers even if a sewer separation occurred (Pet. 2). Petitioner estimates the additional cost of a separated system is \$10,000.00 (A. Pet. 1), and that Petitioner would suffer an arbitrary or unreasonable hardship if forced to bear this burden in view of the minimal environmental benefits to be gained by a separation.

The Agency points out that since the area in question is small and within the boundaries of an existing combined sewer service area, the receiving sewage facilities will not be detrimentally affected by the construction of the proposed combined

sewer. Ultimate compliance with the Board's rules for discharges from this combined sewer system awaits completion of the Tunnel and Reservoir Plan by the MSDGC. The Agency submits there appears to be no apparent benefit in a sewer separation in this instance since both sewers would be connected to the same existing combined sewer. For all of these reasons, the Agency believes Petitioner is entitled to a variance (Rec. 4).

The Agency also raises the question whether any proposed sewer which is intended to receive previously unsewered combined flow should be considered a new combined sewer within the meaning of 602(a), or whether a proposed combined sewer fits into the 602(a) definition only if it is installed in a new drainage area. This latter interpretation would make this present variance unnecessary but would also create a possible gap in the regulations with undetermined statewide effects. It seems the controversy would switch from what is a new combined sewer to what is a new drainage area. But whatever the case may be, the Board certainly needs more information than is contained in the present Recommendation before it would consider adopting this latter interpretation. The Board believes that the former interpretation, which is completely restrictive although easy to apply, provides the greatest safeguards in solving the State's water pollution problems until such time as the Board can render a more informed decision in this regard. Other persons who find themselves in situations similar to this Petitioner's can avail themselves of the variance procedure.

In view of the foregoing, the Board finds that Petitioner is entitled to relief from Rule 602(a) and the variance will be granted. The Board believes, however, that the variance grant from Rule 602(a) obviates the need for a variance from either Rule 962 or 602(d), and these requests will therefore be dismissed.

This Opinion constitutes the Board's findings of fact and conclusions of law in this matter.

ORDER

1. Petitioner, Mary Ann Nowak, is granted variance from Rule 602(a) to allow the construction of a combined sewer to serve ten single-family houses located in Petitioner's Calumet City development.

2. Petitioner's request for variance from Rules 602(d) and 962 are hereby dismissed.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 10th day of November, 1976 by a vote of 5-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board