

ILLINOIS POLLUTION CONTROL BOARD
April 13, 1978

CITY OF WYOMING,)
)
 Petitioner,)
)
 v.) PCB 77-252
)
 ENVIRONMENTAL PROTECTION AGENCY,)
)
 Respondent.)

DISSENTING OPINION (by Mr. Young):

After consideration of the record in this matter, the Board determined that an arbitrary and unreasonable hardship would occur if the variance requested were not granted; I am unable to reach the same conclusion.


There is absolutely no evidence in the record and nothing in the petition concerning the environmental effect of the discharge on the receiving stream, despite the fact that the plant is biologically and hydraulically overloaded. The record indicates that primary effluent is being bypassed directly to the stream; the fraction treated far exceeds the applicable BOD₅ standards (by a factor of at least 4); fecal coliform tests are not being run; and, as is usual with overloaded plants, the flow meter is not operational.

The record contains some very general testimony given at hearing concerning a potential public health problem occasioned by the poor performance of existing septic tank disposal fields within the unsewered portion of the City's First Ward. There is also evidence of the existence of a continuing problem of sewer surcharging and the flooding of basements within the areas currently sewered. Since this basement sewage flooding occurs downstream of the unsewered area for which service is sought, the back-ups can only be aggravated by any additional load.

The standards for the grant of a variance were established by the Board in 1970 in Environmental Protection Agency v. Lindgren Foundry Company, 1 PCB 11, which states at 1 PCB 16 that a variance is to be granted only in those extraordinary situations in which the cost of compliance is wholly disproportional to the benefits;


doubts are to be resolved in favor of denial. It is essential in deciding a variance petition to compare the good effects of compliance with the bad. As set forth in Norfolk & Western Railway Company v. Environmental Protection Agency, 1 PCB 281 (1971), the petitioner has the burden to prove that the ultimate harm is tolerable or excusable when balanced against the effect of a denial. In my opinion, it is not possible to weigh the propriety of the grant of the variance unless the effect of the discharge has been adequately presented; only then can the determination of arbitrary and unreasonable hardship be made. Petitioner having failed in his burden of proof, the petition should have been denied.

It is noted from the record that the City proposes to immediately extend the sewer but does not have sufficient funds to pay the owner's share toward upgrading the treatment works and rehabilitation of the collection system. They must be aware that any funds expended for a sewer extension under this variance will be ineligible for any reimbursement under the state and federal grants program and will not be included as part of the City's 25% share in any future grant program.



James L. Young

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Dissenting Opinion was submitted to me on the 20th day of April, 1978.



Christan L. Moffett, Clerk
Illinois Pollution Control Board