

ILLINOIS POLLUTION CONTROL BOARD
August 4, 1977

HARRY WEESE AND ASSOCIATES,)
)
 Petitioner,)
)
 v.) PCB 77-140
)
)
 ENVIRONMENTAL PROTECTION)
 AGENCY,)
)
 Respondent.)

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

This matter is before the Board on a Petition for Variance filed by Petitioner on May 25, 1977 seeking relief from the combined sewer prohibition in Rule 602(a) of Chapter 3: Water Pollution. An Amended Petition was submitted on June 13, 1977 pursuant to the Board's Order of May 26, 1977. The Agency's Recommendation to grant the variance was filed on July 11, 1977. The hearing was waived in accordance with Rule 401(b) of the Board's Procedural Rules.

Petitioner seeks variance from Rule 602(a) of Chapter 3: Water Pollution, which prohibits the construction of new combined sewers, in order to construct such sewers to service a proposed 2.8 acre development in the Village of Oak Park. The project includes 84 new town house residential units, a commercial building with apartment in the upper floors and two existing buildings to be converted into residential units for a total population estimated at 488. The development will be tributary to existing combined sewers of the Metropolitan Sanitary District (MSD). Petitioner argues that the proposal to replace and modify and thus improve the existing overloaded sewers should be considered "replacements" rather than "new" combined sewers and that construction of separate sewers at the cost of disrupted utility services and \$500,000 is unreasonable.

The facts in this matter are similar to recent variances granted by the Board. Mary Ann Nowak v. Environmental Protection Agency, PCB 76-193 (November 10, 1976); Near North Development

Corporation v. Environmental Protection Agency, PCB 77-78 (May 26, 1977). The Board finds the reasons which made a variance grant warranted in those cases are applicable here as well. There is no problem with sewer backup or flooding in the area and minimal environmental damage will result from this variance grant. The MSD's tunnel and reservoir project (TARP) constitutes an acceptable compliance plan. Requiring the construction of separate sewers would serve no purpose, and, finding that an arbitrary and unreasonable hardship would result from denial, we shall grant the variance from Rule 602(a) of the Water Pollution Regulations.

Petitioner's request for variance from Rule 962 of Chapter 3 is dismissed. However, a grant of a variance from a substantive rule, here 602(a), renders a variance from 962 unnecessary. Petitioner is still required to file for all necessary permits.

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

ORDER

It is the Order of the Pollution Control Board that:

- 1) Harry Weese and Associates is hereby granted a Variance from Rule 602(a) of Chapter 3: Water Pollution, to allow the construction of the proposed combined sewers described in this Opinion herein.
- 2) Petitioner's Request for Variance from Rule 962 of Chapter 3: Water Pollution is dismissed.
- 3) Petitioner shall apply for and receive all necessary Agency permits.

IT IS SO ORDERED.

Mr. Dumelle abstains.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 4th day of August, 1977 by a vote of 4-0.


Christan L. Moffett, Clerk
Illinois Pollution Control Board