



The problems regarding the basement backups in Lancaser Square Subdivision which led to the Agency placing, pursuant to Rule 604, a sewer in that subdivision on restricted status, thus barring the connection of Derby Hills 1 and Pheasant Hollow South 2, would appear to have been corrected as detailed in Paragraphs 5 through 10 in the Affidavit of Anthony Perino, Petitioner's president, executed November 17, 1977, and attached as Exhibit F to Petitioner's Response of November 17, 1977.

The severity of the hardship on the Intervenor Homeowners which was found in our prior grant of the variance and has now been further compounded by additional delays which have arisen from circumstances not of record when the decision was entered.

It is not possible for the Board, on the basis of the allegation presented in the Agency's pleading of November 10, 1977, to come to any conclusion concerning the frequency or severity of the basement backups which led to the Agency imposition of the restricted status on the eight-inch sewer line. We find it incongruous that the Agency seeks a Board determination of whether Paragraph 3 of the Order would allow issuance of a permit for additional connections to a sewer which the Agency had placed on restricted status after the grant of the variance and in support thereof submit a copy of a denial letter (Attachment C to the pleading) which does not even mention a basement backup, and with the knowledge that the record in this matter contained no mention of any transport problem.

Our Order of September 15, 1977, in this matter was intended to solve a problem and the language was broadly couched to do so. Apparently, the Agency feels that they may not now issue the permits, because of their imposition of the restricted status, given the state of the record. Based upon the information now before us in the Agency pleading of November 10, 1977, and Petitioner's Response of November 17, 1977, the Board finds no valid reason why the permits ordered granted on September 15, 1977, should not now be granted, irrespective of Rule 962. Rule 602(b) is always available as the basis for an enforcement action in the event of future overflows from sanitary sewers.

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

ORDER

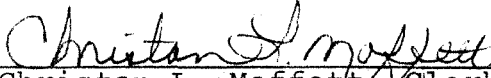
i) Paragraph 3(a) of the Order of September 15, 1977, is hereby modified to read as follows:

a) Derby Meadows Utility Company shall operate a recording flow meter at the sewage treatment plant under an Agency permit no later than 90 days from the date of this Order unless an application for permit has been denied by the Agency pursuant to Section 39 of the Act and the Petitioner has timely filed an appeal of the permit denial in accordance with Rule 502 of the Board's Procedural Rules.

ii) The construction and operation permits for sewers to serve the subdivisions platted as Pheasant Hollow South Unit 2 and Derby Hills Unit 1 shall issue without delay, subject to the Order of September 15, 1977, as modified herein and by the Order of November 10, 1977.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Order was adopted on the 23<sup>RD</sup> day of November, 1977 by a vote of 50.

  
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Christan L. Moffett, Clerk  
Illinois Pollution Control Board