

ILLINOIS POLLUTION CONTROL BOARD
November 8, 1972

CAPITAL DEVELOPMENT BOARD)
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 v.) # 72-418
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 ENVIRONMENTAL PROTECTION AGENCY)

Opinion & Order of the Board (by Mr. Currie):

The State of Illinois Capital Development Board (CDB), successor to the School Building Commission, asks us to extend a variance that permitted connection of a new school to an overloaded sewer. School Building Comm. v. EPA, # 71-247, 2 PCB 681 (Oct. 18, 1971). The CDB asks that we grant an immediate extension without the notice or opportunity for public comment prescribed by the statute, fearing that without such an extension the school must close. To state this request is to demonstrate why it cannot be granted; we cannot bypass the statute's requirements. Moreover, the absence of a variance is not the equivalent of an order to shut down. Both these points are more fully explained in Incinerator, Inc. v. EPA, #72-416, 5 PCB ____ (Nov. 8, 1972).

The Agency raises a question as to the standing of the CDB, presumably on the ground that CDB's functions are related to the construction rather than to the operation of the school. We do not reach this question, for we do not think the petition states facts which, if proved, would justify the grant of a variance. PCB Regs., Ch. 1, Rule 405(b)(1).

The original variance simply allowed connection of the school to the sewers. This connection was accomplished. Upon connection the school was placed in the same position as all others connected to the sewers. No reason is stated why any particular sewer user is in greater need of special permission to continue that use than is anyone else. What was originally forbidden was connection; connection was what the original variance petition requested; connection was allowed and accomplished. That terminated the petitioner's problem and the need for any further variance, absent an allegation that continued discharges may cause or threaten water pollution and that there is a concrete controversy because of the risk of prosecution. There is no such

allegation here. The CDB stands in the same position as any other sewer user in the area. That it required a variance to connect is irrelevant to its position today.

The petition is hereby dismissed.

I, Christian Moffett, Clerk of the Pollution Control Board, certify that the Board adopted the above Opinion & Order this 8th day of September, 1972, by a vote of 3-0.

Christian M. Moffett