

ILLINOIS POLLUTION CONTROL BOARD

November 14, 1974

FIRST NATIONAL BANK AND TRUST COMPANY)
OF EVANSTON, TRUSTEE OF TRUST)
NO. R-1692, and S. S. KRESGE CO.,)
)
Petitioner,)
)
vs.) PCB 74-308
)
ENVIRONMENTAL PROTECTION AGENCY,)
)
Respondent.)

Robert Cohen, Attorney for Petitioners
Barbara Sidler, Attorney for the EPA

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

First National Bank and Trust Company of Evanston and S. S. Kresge Company have filed an Appeal from a Permit Denial issued by the Agency on June 12, 1974. Petitioners seek permission for a sewer connection at a new K-Mart retail store to be constructed in the southwest section of Springfield, Illinois. Because of an overload condition at the Springfield Sanitary District, which is particularly acute during periods of precipitation, the City of Springfield is currently under a sewer ban imposed by the Agency.

The parties are in agreement that the sole issue before the Board is Paragraph 2 of the permit denial which states: "since the holding tank and telemetering equipment must be operated in conjunction with sewers owned and operated by the Springfield Sanitary District, the Sanitary District must assume operational responsibility for the proper operation and maintenance of the closure system (sensor, telemetering system, shut-off valve and valve opening). It will be necessary to provide us with a letter from the Sanitary District stating that it accepts this responsibility." All other reasons for the permit denial have been essentially resolved, and the Agency can issue the permit when "responsibility" for the proposed holding tank and telemetering equipment has been established.

Petitioner will install a five day sewage holding tank at the site of the store. Elimination of sewage from the tank will be controlled by means of a remote probe which is to be installed

in a manhole at Cherry Road and Outer Park Drive. The probe will determine flow conditions in the sewer system of the Sanitary District and then transmit a signal over telephone lines to the tank site. When a "pump" signal is received the K-Mart system will automatically pump sewage from the tank. Upon receiving a "no pump" signal, the system will automatically close and the tank will begin to fill. A signal will be relayed inside the store so that the retail manager will be aware that the tank is filling.

If the tank reaches an accumulation equivalent to three days capacity another signal is then transmitted to the store indicating to the retail manager that the tank has only 2 days capacity remaining. The manager then must arrange to have the tank pumped out and the sewage disposed of.

The proposed system is designed to be fail-safe in that any malfunction or loss of signal will cause the pump to shut off and the discharge valve to close. A manual valve accessible only through a bolted door is located within the tank as required by the Agency design specifications. In the event the tank fills to capacity, the retail manager would then have three options: 1) arrange to have the tank pumped out, 2) let the sewage back up into the store, or 3) descend into the tank and open the manual valve thereby releasing the sewage into the Sanitary District's sewer system.

Petitioner asked the Sanitary District to assume the responsibility for this closure system, but the Sanitary District declined on the ground that "the facilities are benefiting the Petitioner and they should be responsible for the operation and maintenance of them" (R. 48). Petitioners profess to have the necessary expertise available to perform required inspections and maintenance and are willing to accept responsibility for the proper operation of the system.

From the record it appears that there are several reasons for the Agency's insistence on retaining this provision in the permit. First, the Agency seeks to avoid the possibility that K-Mart personnel might attempt to override the automatic controls or open the manual valve if faced with the possibility of sewage backup into the store. To this Petitioner answered K-Mart personnel cannot override the automatic system and that illegal opening of the manual valve would possibly subject the store to prosecution under the Environmental Protection Act and relevant regulations.

Second, the Agency contends that there is the possibility that other projects may seek to install similar systems to be controlled by the same closure system and telemetering sensors that control the K-Mart holding tank. Petitioners acknowledge this possibility but state this argument favors K-Mart control so that K-Mart could be protected from interference with its system by another user.

Finally, the Agency seeks to avoid a possible proliferation of such independently operated systems which could cause additional overloading at the Sanitary District's treatment works.

During the hearing the Agency sought to introduce testimony regarding possible future permit applications for similar systems. Hearing Officer Zelle ruled that such testimony did not pertain to the current issue and refused to allow the introduction of such testimony. The Agency now seeks to have this ruling set aside and to be allowed to submit the information by affidavit.

It is the ruling of the Board that the Hearing Officer's decision on such speculative testimony was correct. The information would be of interest to the Board, but it has no direct bearing on this appeal. Many "possibilities" exist in the realm of pollution control, but only a few actually materialize into real events. If the Agency has information showing that such independent systems will proliferate to the detriment of sanitary districts, perhaps a change is needed in the Water Pollution Control Regulations. In this case, however, the Motion to Overrule is denied.

Petitioners have apparently gone the extra mile to receive this permit. The records show that the system will be operated in the automatic mode thus alleviating the possibility of sewage entering the Springfield Sanitary District system during periods when the Sanitary District cannot adequately treat the additional load. Maintenance for the system is available locally and Petitioners' witnesses have testified that such maintenance will be provided. Indeed, a malfunctioning system would be a severe detriment to continued operation of the retail store.

Since the Agency fears K-Mart personnel might open the manual valve at the wrong time, consideration should be given to sealing the valve with some material that must be broken in order to operate the valve. Petitioners' permit could be so worded that breaking of seal without Agency permission would be grounds for revocation of the permit. Routine inspections by Agency personnel would reveal a broken seal. In addition, Petitioners would also be subject to prosecution for violations of the Environmental Protection Act and applicable regulations.

It is the finding of the Board that the Agency did wrongfully deny permits to Petitioner. The K-Mart system appears to have been designed with sufficient safeguards to preclude additional peak loading on the Springfield Sanitary District's sewer system. If all other conditions for the permit are met to the Agency's satisfaction, the permit shall be issued. The Agency shall not decline to issue the permit solely on the premise that the Springfield Sanitary District accept operational responsibility for the proposed sewage system.

ORDER

It is the Order of the Pollution Control Board that the Environmental Protection Agency shall not deny Petitioners a permit for construction of a proposed sewage system as described elsewhere in this Opinion solely on the basis that the Springfield Sanitary District assume responsibility for operation and maintenance of the proposed system.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order was adopted this 14th day of November 1974 by a vote of 5 to 0.

Christan L. Moffett