

ILLINOIS POLLUTION CONTROL BOARD
March 21, 1974

DONALD B. POTTER,)
)
Petitioner,)
)
vs.) PCB 73-560
)
ENVIRONMENTAL PROTECTION AGENCY,)
)
Respondent.)

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

Donald B. Potter (hereinafter Petitioner) filed a Petition For Variance with the Environmental Protection Agency (hereinafter Agency) on December 27, 1973.

Petitioner requests a variance from Orders #6(c) and 6(d) of North Shore Sanitary District v. Environmental Protection Agency, PCB 71-343, in order to obtain a sewer connection for a single family dwelling located in the City of Waukegan, in Lake County.

In an order dated January 3, 1974, the Pollution Control Board requested additional information from the Petitioner. The information was never received; however, the Agency has provided the information necessary for a decision on this matter.

Petitioner is the owner of the building in question. It is presently rented to a blind tenant with a family of six.

The proposed connection would be tributary to the Northeast sewer which is classified by the Agency as hydraulically overloaded and inadequate to transport additional wastewater loads. This sewer is subject to excessive flows from stormwater runoff during periods of wet weather, which result in the bypassing of untreated wastes into an unnamed drainage ditch via a constructed bypass discharge line. During excessive flow periods, raw wastes are often displaced into the basements of residences connected to the subject sewer because of sewer backups. The Agency is aware of no plans by the City of Waukegan, owner of the subject sewer, to correct this problem. We are concerned by the City's lack of action in response to a patent health hazard. The Agency believes that absent a showing of arbitrary or unreasonable hardship, connections to the Northeast sewer should not be permitted until such time as the sewer is found to have sufficient hydraulic capacity.

Petitioner alleges that the septic tank system serving the dwelling is malfunctioning due to the heavy usage by the blind tenant's family of six, thereby causing sewage odor in the tenant's dwelling and the possibility that the sewage seepage could contaminate a nearby well that serves the building. On November 9, 1973 the Lake County Health Department conducted a field evaluation of Petitioner's septic tank system which revealed the malfunctioning of the system due to severe clay soil limitations and the heavy usage of the septic system by the tenants. It was concluded that the malfunctioning has created an obvious health hazard.

Petitioner further alleges that a sanitary systems contractor has advised him that the only practical solution to the problem would be connection to the Waukegan sewer system.

The Agency believes Petitioner's case presents sufficient hardship to justify the grant of the variance. The Pollution Control Board has granted variances pursuant to Agency recommendations in cases such as the present one where a petitioner has conclusively shown that a public health hazard exists in regard to the operation of a septic system and this health hazard cannot be eliminated through improved maintenance or relatively minor repairs of the system (See e.g. Elsa J. Miller v. EPA, PCB 73-43; James Clark v. EPA, PCB 73-38; Winsor v. EPA, PCB 71-334; Robert J. Bartell v. EPA, PCB 72-382; and John and James Gibbs v. EPA, PCB 73-472.) Petitioner has adequately shown that the septic system cannot be repaired so as to operate effectively and that the present operation of the system constitutes a public health hazard. We agree.

This Opinion constitutes the findings of fact and conclusions of law of the Board.

IT IS THE ORDER of the Pollution Control Board that:

Petitioner be granted a variance to obtain a sewer connection for a single family dwelling located at 3505 North Lewis Avenue in the City of Waukegan.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, certify that the above Opinion and Order was adopted on this 21st day of March, 1974 by a vote of 5-0.

