

ILLINOIS POLLUTION CONTROL BOARD  
January 6, 1972

RICHARD ABEL & COMPANY, INC., and )  
ZION STATE BANK AND TRUST COMPANY, )  
as Trustee under Trust No. 135 )  
 ) #71-290  
 )  
v. )  
 )  
ENVIRONMENTAL PROTECTION AGENCY )

MR. DONALD C. LUNDQUIST, ATTORNEY FOR PETITIONERS  
MR. RICHARD COSBY, ASSISTANT ATTORNEY GENERAL, ATTORNEY FOR  
ENVIRONMENTAL PROTECTION AGENCY

OPINION OF THE BOARD (BY MR. LAWTON):

Petition for variance was filed by Zion State Bank and Trust Company, Trustee under Trust No. 135, as record title holder, and Richard Abel & Company, Inc. as contract purchaser, seeking relief from our sewer ban order entered in League of Women Voters v. NSSD, #70-7, to enable the contract purchaser to construct a new wholesale book warehouse in the Zion Industrial Park, Zion, Illinois. Abel presently operates its wholesale book business in Zion, employing approximately 100 persons. The present location is leased until 1973 and Abel does not anticipate any problem in renewal of the lease. However, the present space is inadequate, both as to accommodating growth of the business and in providing suitable parking. A 50,000 square foot structure is contemplated on the new site with expansion ultimately to 100,000 square feet. The same number of persons would be employed at the new site as at the old.

The evidence indicates that an average of 610 gallons of water per day are discharged from the present structure, principally from washroom use. No industrial sewage is generated by the operation, nor will any be at the new location. The present facility is not air-conditioned while the new one will be. The evidence is not clear as to whether this will create any increase in the water flow into the sewers or whether water used for air-conditioning will be recycled. Construction cost of the new structure will be in the range of \$800,000.00. No work has been done on the premises to date and Abel's contract of purchase is conditional on allowance of the sewer tie-in. Petitioners allege that a septic system could be installed at the new location for \$12,000.00.

On the facts of the present case, we must deny the variance. We recognize that the hydraulic and organic load on the sewer system generated by the proposed operation will not be extreme. However, this case must be decided on the doctrine set forth in Fred Wachta and J. Richard Mota, d/b/a Belle Plaine Division v. EPA, #71-77; Robert H. Monyek v. EPA, #71-80; and Robert C. Wagnon v. EPA, #71-85. No construction has been initiated to date. Further, there is no question but that the premises vacated by petitioners will be available for continued use, presumably of an intensity comparable to that presently existing. This is not a simple case of moving one sewer load to another location. The sewer load, in effect, would be doubled by allowing the new operation, and at the same time permitting the availability of the old site for continued use. Cf. Lake County School District #64 v. EPA, #71-313, #71-382; Waukegan Park District v. EPA, #71-314, #71-342.

We recognize the desire of the City of Zion to have the new facility in its industrial park, as eloquently expressed by Mayor Dunbar. However, the hardship on Petitioners is disproportionate with that which would be imposed on the community if we do not adhere to our original order set forth in League of Women Voters v. NSSD, #70-7, which we have varied in only the most extreme cases of hardship and where the public welfare would not be adversely affected by such variance. The showing in the present case is not of a magnitude to justify this action.

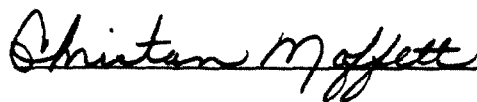
The Board is presently conducting hearings on regulations relating to sewer connection bans, #R71-19. At such time as these regulations are adopted, petitioners may again seek such relief as is appropriate. Our Order of denial in this proceeding in no way forecloses them from taking such action.

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

Mr. Dumelle dissents.

IT IS THE ORDER of the Pollution Control Board that the variance be denied.

I, Christan Moffett, Clerk of the Illinois Pollution Control Board, certify that the above Opinion was adopted on the 6<sup>th</sup> day of January, 1972, by a vote of 3-1.

  
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