

ILLINOIS POLLUTION CONTROL BOARD
July 25, 1974

SPRINGFIELD MARINE BANK)
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 v.) PCB 74-117
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 ENVIRONMENTAL PROTECTION AGENCY)
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MR. JOHN H. SQUIRES and MR. HARVEY B. STEPHENS, of BROWN, HAY, and STEPHENS, appeared on behalf of Petitioner;
MR. HANK HANSEL and MR. DELBERT HASCHEMEYER and MR. JOHN REIN, appeared on behalf of the Environmental Protection Agency;

OPINION OF THE BOARD (by Mr. Dumelle):

On June 28, 1974 the Board entered an Order denying the Variance Petition filed by Springfield Marine Bank as Trustee. Due to the exigencies of time, the Board did not file an Opinion accompanying the previously issued Order pursuant to Procedural Rule 408.

Petitioner, Springfield Marine Bank, as Trustee for Trust #51-0419-0 filed a Petition for Variance on April 1, 1974. The Environmental Protection Agency (Agency) filed a Recommendation to Deny the requested variance on May 3, 1974. At a Pre-Hearing Conference held on May 8, 1974 between the Parties and the Hearing Officer, May 28 and May 29 were set as original hearing dates. These original hearing dates violated Procedural Rule 406 which requires that public notice be issued at least 21 days prior to the date of the Hearing. Therefore, over Petitioner's objection, the Hearing Officer rescheduled the hearings to June 19, 1974, which allowed for proper notice to be issued. Petitioner objected and expressly reserved his right pursuant to Section 38 of the Environmental Protection Act to require final action by the Pollution Control Board within 90 days after the date of filing of the Variance Petition.

Petitioner correctly stated that the June 19, 1974 hearing date was more than 70 days beyond the date of filing of the Original Variance Petition, which also violated Procedural Rule 406. This 90-day requirement found in Procedural Rule

406 is designed to insure that Petitioners will be able to proceed to a hearing and furnish the transcript of such hearing to the Board in time for deliberation and decision prior to the 90-day decision period. Petitioner was not prejudiced by the rescheduling, as the Board decided the variance request prior to expiration of the 90-day period.

Counsel for Petitioner represented to the Board, at the Board Meeting on June 27, 1974, that he had filed the entire transcript and record of the hearings regarding his clients Variance request, and that he was reserving his right to a decision within 90 days. The 90-day decision period expired on June 30, 1974. The Board had scheduled a two day Board meeting to last until June 28, 1974. The Exhibits presented at the hearing were not filed with the Clerk of the Board until June 28, 1974. After complete review of the transcripts on June 27, and examination of the Exhibits on June 28, 1974, the Board voted to deny Petitioner the requested relief.

Petitioner seeks a Variance from the ban on further sanitary sewer extensions in the southwestern area of the City of Springfield, which was imposed by the Agency pursuant to Rule 21(a) of Chapter 3: Water Pollution Regulations of the Illinois Pollution Control Board (Water Pollution Regulations). If granted such a variance, Petitioner would be able to obtain an Operating Permit for a sanitary sewage extension to enable the connection of 107 single-family residences located in what is known as the Westchester Addition in the southwestern area of the City of Springfield, Sangamon County, Illinois. Petitioner serves as trustee under an Illinois land trust. The beneficial interest in that trust is held by a joint venture known as the Westchester Trust; the participants of which are seven individuals and one additional joint venture (R. 39). As agreed among the parties at the Pre-Hearing Conference stage, no evidence was allowed to be introduced at the Hearing in reference to individual financial hardship upon the individual joint venturers caused by the sewer ban (R. 21). Therefore, the Board had to weigh the economic hardship imposed upon the Westchester Trust against the public hardship.

Petitioner began in 1962 to develop the Westchester Addition through sixteen steps (R. 25). The first 15 parts, or additions, to the Westchester Addition were completely developed by October 1971 (R. 41), and all lots within the 15 parts have been sold. Therefore, Petitioner seeks the current variance to allow it to proceed to develop the 16th and final part of the Westchester Addition.

The Board finds initially that the Hearing Officer erred in excluding the previous tax records as to income produced by the

Trust on the total Westchester Project. Petitioner states that they are making no claims as to hardship on the first 15 additions (R. 163). This is because all lots in the first 15 additions within Westchester Addition have been sold. In weighing the hardship imposed upon the Petitioner by the Agency sewer ban, the income over the life of the project is a very relevant factor when, as in the present case, we are dealing with the ability to finish the last step of the total project. The Agency was allowed to introduce evidence consisting of the 1972 and 1973 income tax forms for the Trust (Agency Exhibit 7). The 1972 taxable income for the Trust amounted to \$213,721.00 (R. 239); the 1972 taxable income was shown to be \$94,183.00 (R. 239); and a \$10,000.00 loss was projected for 1974 (R. 251). Regardless of the Hearing Officer's error in excluding the previous years' taxable income, the record is clear that Petitioner has failed to prove an economic hardship imposed upon the Trust which would warrant the granting of the requested variance. For the two years in which the data were provided, the taxable income totals \$307,904.00. The introduction of the Trust income for the years prior to 1972 would only serve to further support the Board's denial of the Variance Request and therefore the Hearing Officer's error is not a critical factor in our decision.

The Board rejected Petitioner's claim that the Agency is estopped from denying Petitioner an Operating Permit. Petitioner based its activities upon reliance of a letter sent by the Agency to the Springfield Sanitary District (District) on August 29, 1972 (Petitioner Exhibit 8). This letter outlines steps which the District had taken and proposed to take to remove excess flow from the Outer Park Sanitary Sewer Drainage Area, and based upon these projects the Agency stated it would be able to issue a limited number of "Conditional Installation Sewer Permits" which would allow the connection of new sewers to the system when the sewage treatment plant is completed and in operation. The Board has addressed the question of reliance upon this letter in two previous opinions which rejected the doctrine of detrimental reliance (Viking Investment Corporation v. EPA, PCB 73-236 (Order August 30, 1973, Opinion September 6, 1973) and Springfield Marine Bank v. EPA, PCB 73-348 (December 13, 1973)). This Agency letter was sent to the District not to Petitioner. Petitioner received a copy sometime after August 29, 1972 (R. 69). Mr. Charles Johnson, Manager of the Westchester Trust, stated that after he had obtained a copy of the August 29, 1972 letter, he directed his engineers to apply for a Conditional Installation Sewer Permit (R. 72). Mr. Johnson stated, however, there were no commitments or statements in the August 29, 1972 letter which led him to believe that he would be immediately granted an Operating Permit as soon as he received a Conditional Installation Sewer Permit (R. 73). He further stated that he understood that a Conditional Installation Sewer Permit is not the same as an

Operating Permit (R. 73).

The Agency questions the reasonableness of the reliance of Petitioner upon the August 29, 1972 letter in that it was sent to the District not to Petitioner; and therefore, Petitioner should have examined other correspondence and events preceding and following the issuance of Petitioner's Exhibit 8. Mr. Johnson stated that all he needed was the August 29 letter (R. 188). The Board agrees with the Agency's contention. Petitioner's Exhibit 8 refers to letters of August 11 and August 23, 1972 from the District, which outlined the future steps to be taken by the District to relieve the sewer overload problem. The August 29, 1972 letter did not lift the sewer ban but merely warned the District that continued issuance of Conditional Installation Sewer Permits would depend on further progress in relieving the overload problem in the Outer Park Drive Area.

Petitioner's Conditional Installation Sewer Permit contains four conditions which are relevant regarding the question of Petitioner's reliance upon the August 29, 1972 letter. Condition #2 states that hookup to the existing sewers shall not be completed without an Operating Permit from the Agency (Petitioner Exhibit 11). Condition #3 requires that the installation of the new sewers stop 10 feet from existing sewers so that hookup to the existing sewers would be prohibited until an Operating Permit was received (Petitioner Exhibit 11). Condition #4 states that the accompanying permit issuance letter and the permit itself does not revoke the critical review status regarding the District--the sewer ban (Petitioner Exhibit 11). Mr. Johnson testified that he saw the permit, read the permit, and understood the language contained in all four conditions (R. 77). Mr. Johnson directed his engineers to request an Agency Waiver of the burdensome requirement of Condition #3 which resulted in Petitioner having to leave holes in their developed streets so as to be able to connect the new sewers to the existing sewers (R. 78). In a letter dated November 16, 1972, the Agency denied the Waiver of Condition #3 (Petitioner Exhibit 12). The request and denial of a Waiver of the burdensome Condition #3 should have provided an early warning to the Petitioner that an Operating Permit would not be forthcoming unless the reasons which precipitated the sewer ban were solved.

Petitioner stated after obtaining the Conditional Installation Sewer Permit that it entered into contracts for the construction and installation of sanitary sewers, curbs, sidewalks, streets, water mains, and other improvements in the 16th addition (R. 79). Petitioner's Exhibit 24 shows that the expenses as of the date of hearing on addition #16 constitute \$373,544.06 plus interest (R. 113).

Petitioner further alleges that the purchase of the Spaulding Orchard Farm for \$676,760.00 constitutes a further hardship to be weighed by the Board because Petitioner would need further land to develop when the 16th addition would be completed (R. 122). However, Mr. Johnson testified that the May, 1973 purchase had two functions, either development or investment (R. 209). He further testified that the actions regarding the 16th addition do not prohibit the development of the Spaulding Farm (R. 209). Therefore, the Board rejects the contention that the purchase price or interest incurred on the purchase loan should be used in weighing the hardship imposed upon Petitioner by the sewer ban which affects the Westchester 16th addition. In further support, the Spaulding Farm is currently being utilized by Petitioner on a share-farming basis and rental of a farmhouse on the property (R. 223).

Petitioner contended that the flow originating from the 16th addition would have only a minimal affect on sewer overflows, basement flooding, or bypasses of raw sewage (R. 354). As a further argument, Petitioner alleged that because most of the sewer problems occur upstream from the junction between the sanitary sewer extension which serves the Westchester Addition and the Outer Park Drive Sewer, that the addition of the flow from the Westchester 16th addition would not aggravate the problem. Agency witnesses testified that any additional flow would aggravate the problem (R. 612). The Board agrees with the citizen witness who commented that if a sewer system cannot serve the existing flow without surcharging, then any addition to that sewer system downstream from the point of surcharge would result in an additional surcharge equal to the amount of flow added below the point of surcharge (Public Session, p. 20). It is a fundamental engineering principle that if a conduit is flowing at capacity to the point where attempts to add additional flow cause it to back up and overflow; that the introduction of any additional quantity of flow will cause the exclusion of the like quantity upstream from such addition. A sewer can only transport so much flow unless the pressure head or gradient is increased, or friction factors reduced. The Board rejects Petitioner's argument that because its flow enters the Outer Park Sewer downstream from the majority of the sewer surcharging and basement flooding problems that such upstream sewer surcharging and basement flooding are irrelevant.

Testimony of the two Agency witnesses, Mr. James C. Frost and Abraham H. Loudermilk, Jr., graphically points out that the problems which resulted in the original Agency sewer ban in July of 1972 and the discontinuance of the issuance of Conditional Installation Sewer Permits in March, 1973, still continue to

exist (Agency Exhibits 12 and 16). Both of these Agency witnesses testified regarding the large number of incidences of manhole surcharging, bypass of sanitary wastes into storm sewers and District pumping of sanitary waste into a storm sewer channel whenever it rains in the Outer Park Drive Area.

Mr. L.K. Crawford, the District Consulting Engineer, testified at length regarding the basement backups, overflow of manholes, sewer surcharging, sewage treatment plant bypassing and other problems associated with excess flows occurring after storms. He presented a detailed history of the steps the District has undertaken to alleviate the problems in the Outer Park Drive Area. These projects consisted of investigating bottlenecks in the sewer system (R. 280); a campaign to disconnect downspouts from the sanitary sewers (R. 283); dye tests which show the interconnection of storm and sanitary sewers (R. 285); the use of polymer addition to increase the flow capacity of the Outer Park Drive Sewers (R. 295); an active campaign to seal the joints in the sewer pipes which would allow infiltration of groundwater (R. 301); and other activities by the District. Mr. Crawford testified that at the time of August and September, 1972, during wet weather flow periods, there did not exist adequate capacity in the Outer Park Drive Sewer System and further stated that everybody knew that the manholes overflowed in the area (R. 461). He stated that the previous projects undertaken by the District have not solved the problem completely (R. 404). He additionally testified that at the time the District approved Petitioner's Conditional Installation Permit Application that he was not asked, nor did he give any advice to the District on sewer capacity regarding the individual permit application (R. 446). In fact, sometime between July and September, 1972, Mr. Crawford suggested that any program the District would carry out to solve the problem would be both time consuming and costly (R. 442).

The District and Mr. Crawford began work on a project which would have moved 2.2 mgd of flow from the Outer Park Drive Sewer to the Fayette Sewer (R. 339). However, Mr. Crawford testified that the District ordered him to stop work on the project when the Agency refused to guarantee a prior lifting of the sewer ban based upon the District's presentation that it would solve the sewer transport problem on October 12, 1973 (R. 350, 351). The Board finds that the sewer transport problems and discharge of sanitary waste into storm sewers and storm channels continues to exist as of the date of the hearing and that the original reasons for the Agency's imposition of the sewer ban in July, 1972 continue to exist. This finding is based upon the testimony presented by the two Agency witnesses (Agency Exhibit 12 and 16), the testimony presented by Mr. Crawford and the citizen testimony regarding the effects of these problems in the area.

In reaching this determination to deny the Variance request to the Petitioner, the Board evaluated the hardship to the public which exists and would be aggravated by the additional flow generated within the Westchester 16th addition. The hardship the public endures in the southwestern portion of Springfield, which is served by the Outer Park Drive Sewer occurs whenever rainwater enters the sanitary sewer in such quantity so as to exceed the carrying capacity of the sewers tributary to the sewage treatment plants. The testimony of Agency witnesses Frost and Loudermilk graphically portray the surveillance record regarding sanitary sewers overflowing from April 20, 1972 until the date of the hearing (Agency Exhibits 16 and 12). Mr. Crawford testified that there have been sewer transport problems in the area for 30 years (R. 271). As will be further set out below, citizens testified at the public hearing portion of the record that for as long as they have lived in the area, that they have experienced sewer problems. The Agency's sewer ban, or imposition of critical review status on the District, was based on sanitary sewer overflows, basement flooding, and the District's Spring Creek sewage treatment plant being overloaded beyond design average flow.

Following periods of rainfall, the sanitary sewers serving the Outer Park Drive area are filled in excess of capacity, this results in sanitary sewage overflowing manholes located above and below the point of Petitioner's interconnection with the Outer Park Drive Sewer (Agency Exhibit 12, page 5, 6, and 8). This overflowing of the manholes located along Outer Park Drive, results in lakes or pools of sanitary sewage being formed which, in turn, restrict and limit traffic along Outer Park Drive (Agency Exhibits 14 and 15). The force of the water contained in the sewers has caused flows from mere seepage to founts or geysers which have reached 1-1/2 feet in height (Agency Exhibit 16, page 10). On numerous occasions the force of water has completely lifted or blown the manhole covers off of a manhole (Agency Exhibit 12 and 16). Mr. Loudermilk testified that he has observed "children playing on a barricade erected over manhole number 37 in such a manner that the children could have drowned if they had fallen into the opening" (Agency Exhibit 16, page 8). The sanitary sewage which overflows to the manholes contains bits of food, toilet tissue, and fecal material, and possesses a decidedly sewage-type odor (Agency Exhibit 16, page 4 and 8). The overflows of sewage from the manholes were contained in impoundments surrounding the manholes, flowed out into the lawns in which the manholes are located (Agency Exhibit 12, page 4), and flowed into the open stormwater channel which parallels Outer Park Drive (Agency Exhibit 16, page 5). In addition to this indirect overflow into the open paved stormwater channel, the District has undertaken a procedure where they pump sanitary sewage from the Outer Park Drive sewer into the stormwater channel at the intersection of Lowell and

Outer Park Drive (R. 397, and Agency Exhibit 16, page 5). Agency Exhibit 13 is a group of photographs which graphically portray the geysering and overflow caused by the lack of adequate capacity in the Outer Park Drive sewers.

Citizen witnesses testified that teenage children swim in this paved stormwater channel which contains the sanitary sewage as outlined above (Public Session, page 38 and 72). Agency Exhibit 13 are photographs taken of children swimming in this ditch. Mr. Loudermilk further testified that "sewage overflowing from manholes discharges into storm sewer inlets along the Outer Park Drive area and discharge is to a paved channel which parallels Outer Park Drive. This paved channel discharges into a natural drainageway, thence to Jacksonville branch and thence to Spring Creek, a tributary to the Sangamon River" (Agency Exhibit 16, page 11). This overflow of sanitary sewage flows through both Washington and Passfield Parks on its way to the Sangamon River. Such sanitary sewer overflow can interfere with and degrade the water quality of the lakes contained in these parks.

Mr. Loudermilk, an Agency Civil Engineer, concluded after numerous observations and investigations that there does not appear to be any visual improvement in the situation regarding manhole overflows as the result of the District or City's action to date (Agency Exhibit 16, page 11). He further stated,

"Based upon my observations of overflowing manholes along the southwest interceptor prior to and after intersection with the flow from the Outer Park Drive sewers, it is my opinion that any additional discharge of sewage to the southwest interceptor will result in more flow at a higher pollutional concentration reaching Jacksonville Branch Creek during periods of heavy precipitation. This flow will reach the Creek either through overflowing manholes, sump pumps removing backup sewage from basements, or by discharging at the Washington Street overflow structure" (Agency Exhibit 16, page 11).

In addition to the overflowing of manholes the problems are caused by the inadequate capacity of the sewers in the Outer Park Drive Area. These sanitary sewers back up into a large percentage of the basements in the area. (See Hearing Officer Exhibits). The transcript of the hearing of the public session held at 7:30 p.m. on June 20, 1974 is replete with the citizen testimony regarding such backups. Citizens testified that every year for the past 15 years they have experienced sewer backups (Public session, page 25). Citizens testified that every year the problem seems to get worse (Public session, page 66 and 73) as the farmland in the area is converted to residential use (Public session, page 42). Citizens testified

regarding the presence of odor every time there is a backup (Public session, page 26). Citizens testified regarding four inches of sanitary waste backing up into the basement which required the shovelling of feces and paper (Public session, page 37). Other citizens testified regarding the ruining of a finished basement recreational room caused by the backup of sanitary waste (Public session, page 45). Citizens testified regarding the necessity to push water from the area in which it was entering the basement to the sump pump from approximately 2 a.m. to 7 a.m. on evenings following a rain (Public session, page 60); and one citizen allegedly had a heart attack sweeping water which entered her basement (Public session, page 74).

Testimony presented at the hearing indicated that citizens do have certain remedies which they may undertake to minimize or prevent the majority of the problems outlined in the above paragraph. These consist of installing plugs in basement drains and washing machine drains. The plug prevents the direct backup of sanitary sewage into basements. However, once a plug is installed, the citizens cannot do such normal functions such as laundry, use of basement toilets, or basement clean up (Public session, page 40 and 63). Because the plug prohibits the backup into the basement, the flooding of the sanitary sewers in the street causes a buildup of pressure in the citizen's sanitary sewer leading from their homes. This causes failures in the seals in the sewer joints which in turn results in the backup of sanitary sewage into the ground surrounding the sewer leading from the house to the street and backup under the basement floor. This backup into the ground causes basement floors to crack (R. 617 and Public session page 33, 50, 52, and 70). This cracking results in basement flooding even though plugs are installed in the drain. This flooding has necessitated the need to install sump pumps in surrounding citizens homes (Public session, pages 25, 42, 49, 52, and 74).

The problems, caused by the inadequacy of the sewer capacity in the Outer Park area, result in economic, physical, and public health hardships to those who live in the area. The economic hardship is demonstrated by one citizen who testified that the backup of water has twice required him to dry out air conditioning fans and motors, washing machine motors, and dryer motors at considerable expense (Public session, page 26). Other citizens testified as to other economic problems such as the destruction of personal articles stored in the basement (Public session, page 45). In addition to the damage caused, citizens were forced to expend money for sump pumps and other remedial steps (Public session, page 49). One citizen testified that he had a plumbing estimate that ranged between \$1,000 and \$1,500 to correct the problem; which did not include the cost to replace shrubbery and fences which would be necessary following the plumbers work (Public session, page 26).

Another citizen raised the valid point that the individual economic and other hardships faced by the approximate 900 homes in the area, when totalled together, reach a substantial economic figure (Public session, page 27). Another citizen questioned the resulting effect on the resale value on the homes in the area from the sewer back up problems (Public session, page 61). The Board finds that this citizen testimony, when examined as a whole, graphically illustrates the economic interference caused by the inadequate carrying capacity of the Outer Park Drive sewers.

While little evidence is detailed in the record regarding the public health menace resulting from sanitary sewage overflow and sewage backups into basements, the parties entered a Stipulation which reads:

"The parties hereby stipulate that exposure to sanitary sewage overflow and sewage from basement backup represents a significant health hazard, particularly to young children in that such exposure may contribute to aggravate or cause a number of communicable and enteric diseases, such as typhoid or hepatitis. However, as of the time of the Stipulation no testimony has been introduced to show such diseases have actually occurred in the subject sewage area" (R. 431).

In numerous previous opinions dealing with the overflow or backups into basements of sanitary sewage, the Board has dealt at length with the public health hazard resulting from both bacterial and viral infections, as well as potential electrocution hazards. One citizen testified that teenage boys swim in the paved stormwater channel which Agency witnesses have testified contained the overflow from manholes as well as the pumping of sanitary sewage from District sewers (Public session, page 72). She testified that the boys swim in the ditch and that they dive head first into the ditch (Public session, page 72). She further testified that small children come into the area whenever the manhole overflow problems occurs to observe the "pretty fountains" (Public session, page 72) and she had observed little girls cup their hands and drink the water from the "pretty fountain" (Public session, page 73). Other citizens testified that children are constantly playing in the storm drainage ditch where the overflow goes after each rain (Public session, page 38). This testimony, in addition to the previously alluded to testimony regarding the fact the paved channel eventually flows to City parks and thence to the Sangamon River, constitutes substantial public health risks for which the Agency properly imposed a sewer ban in July, 1972 and for which the Board must give great weight when weighing variance requests which would add to the risks.

After reviewing and ultimately rejecting Petitioner's claim that he is entitled to an Operating Permit based on the August 29, 1972 letter to the District and after giving weight to Petitioner's economic hardship versus the public's environmental

hardships, the Board examined two additional areas. The first area is that of Petitioner's allegation that to deny it an Operating Permit or a Variance would be arbitrary in that the Board has granted variances and the Agency has granted permits for certain developments located within the same area as Petitioner's proposed 16 addition (R. 138). The Board has granted a limited number of variances which resulted in the Agency granting Operating Permits pursuant to orders of the Board in four previous cases.

Variances were granted in two cases where apartment buildings were constructed before the effective date of the Agency-imposed sewer ban on July 12, 1972 (First National Bank of Springfield, Trustee of Trust #3010 v. EPA, PCB 72-301, (October 10, 1972) and Illinois National Bank of Springfield, Trustee of Trust #13-03545 v. EPA, PCB 72-307, (October 3, 1972)). The Board granted these two variances following the precedent that, in weighing the hardship on an individual case by case basis, to disallow connection when the actual building construction had commenced prior to a sewer ban order would impose an arbitrary and unreasonable hardship.

In Illinois National Bank of Springfield, Trustee of Trust #PL34-78 v. EPA, PCB 72-300, October 3, 1972, the Board granted a variance which would ultimately provide housing for elderly persons and for other persons of moderate income requiring government subsidies to afford adequate housing; where the land in question was to be developed with financial assistance from the Illinois Housing Development Authority. In that case it was represented that there existed a dire need for public and government subsidized housing and that the Illinois Housing Development Authority would withdraw its support money if a permit to install and operate could not be issued. Based upon these facts, the Board in PCB 72-300 found the requisite hardship and granted a variance.

In Viking Investment Company v. EPA, PCB 73-236, September 6, 1973 (referred to by Petitioner as Candle Tree), the Board granted a variance to a petitioner who had spent an excess of \$4,000,000.00 on the construction of an apartment complex. In that case, all of the buildings had been essentially constructed. In contrast to the apparent position of Petitioner, the Board has not previously granted a variance in any Springfield sewer ban case with the exception of PCB 72-300 where the subject buildings have not been constructed.

Petitioner admits that there has been no construction beyond roads, sewer lines, water mains and other utilities (R. 26). In repeated past cases the Board has held that construction must have been substantially completed in order to justify the granting of a variance (See e.g. Wagnon v. EPA, PCB 71-85;

Monyek v. EPA, PCB 71-80; Feige v. EPA, PCB 72-192, Lobdell and Hall v. EPA, PCB 72-511; and Springfield Marine Bank v. EPA, PCB 73-348). Petitioner makes no allegation that vandalism or other destruction of the in-place improvements has occurred (R. 151). Petitioner states some fear that unknown children might place foreign objects in the existing sewers (R. 151). This vague threat of possible future vandalism is not sufficient to warrant the grant of a variance.

In Wachta and Mota v. PCB and EPA, PCB 71-77, the Court held that the doctrine of equitable estoppel applies to administrative agencies. In the Wachta decision, the Petitioner had been granted a permit to both install and operate sewers by the Pollution Control Board's predecessor, the State Sanitary Water Board. Applying the doctrine of equitable estoppel, the Court held that the Board and the Agency were stopped from withdrawing the sewer connection permit which had earlier been granted by the State Water Board. The Board notes that the Wachta decision is not controlling because in the present case, the Springfield Marine Bank as Trustee was merely issued a Conditional Installation Permit which does not necessarily guarantee the issuance of an Operating Permit.

The Board, in summation, has denied Petitioner's variance request because the economic hardship to the land trust, not the hardship to the individual beneficiary owners, does not outweigh the harm to the public and the environment caused by the continued sewer overflows and basement backups. The Board finds, contrary to Petitioner's allegation of minimal impact, that the principle of a sewer ban or critical review status is to limit or prohibit the aggravation of an already bad situation. The record in this case is replete with testimony regarding the environmental and health problems caused by the overloaded sewers and sewage treatment plants. Petitioner has failed to prove that its hardship outweighs the public hardship and therefore the Board denied Petitioner's requested variance.

The Board in denying Petitioner's Variance does not prohibit the development of the sixteenth addition; but rather delays that development until such time as the sewer transport problems have been solved. The Westchester Trust has fully developed fifteen other parts of the total Westchester Addition since 1962.

A variance or permit denial appeal reversal which allows the connection to an overloaded sewer or sewage treatment plant is unique and should be contrasted to other variances. The granting of relief from a sewer ban has no time limits as once connection is made, it is made forever. No one, not the local sanitary district or the Agency, will ever argue that the allowed connection should be disconnected at some future date. The Board in other variances from regulations or the Act is limited to variances that entered a statutory maximum of one year (or five years

in the case of dischargers who must obtain a National Pollutant Discharge Elimination System Permit (NPDES). Thus, such variances are subject to periodic Board review; such is not the case in a sewer ban variance.

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

Mr. Henss abstained.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion was adopted on the 25th day of July, 1974 by a vote of 4-0.


Christan L. Moffett, Clerk
Illinois Pollution Control Board