

ILLINOIS POLLUTION CONTROL BOARD
May 22, 1986

WILLIAM J. HAUCK,)
)
 Complainant,)
)
 v.) PCB 85-46
)
 CITY OF WOOD DALE,)
)
 Respondent.)

MR. WILLIAM J. HAUCK APPEARED PRO SE;

MR. ERWIN JENTSCH APPEARED ON BEHALF OF RESPONDENT.

OPINION AND ORDER OF THE BOARD (by J. D. Dumelle):

This matter comes before the Board upon an April 1, 1985 Complaint filed by Mr. William J. Hauck of Wood Dale, Illinois against the City of Wood Dale (City) which is located in northeastern DuPage County with a population of approximately 11,000. Mr. Hauck alleges that the City has violated Section 12(a), (b), (c), (d) and (f) of the Environmental Protection Act and 35 Ill. Adm. Code 306.102(a), 306.303 and 306.304. Hearing was held on November 22, 1985 at which testimony and exhibits were presented. Mr. Hauck presented a motion to amend his complaint to include in the prayer for relief other such remedies as may be authorized by 35 Ill. Adm. Code 103.224. The Motion is hereby granted.

Section 12 of the Environmental Protection Act provides in pertinent part that:

No person shall:

- a. Cause or threaten or allow the discharge of any contaminants into the environment in any State so as to cause or tend to cause water pollution in Illinois, either alone or in combination with matter from other sources, or so as to violate regulations or standards adopted by the Pollution Control Board under this Act;
- b. Construct, install, or operate any equipment, facility, vessel, or aircraft capable of causing or contributing to water pollution, or designed to prevent

- water pollution, of any type designated by Board regulations, without a permit granted by the Agency, or in violation of any conditions imposed by such permit;
- c. Increase the quality or strength of any discharge of contaminants into the waters, or construct or install any sewer or sewage treatment facility or any new outlet for contaminants into the waters of this State, without a permit granted by the Agency.
 - d. Deposit any contaminants upon the land in such place and manner so as to create a water pollution hazard;
 - f. Cause, threaten or allow the discharge of any contaminant into the waters of the State, as defined herein, including but not limited to, waters to any sewage works, or into any well or from any point source within the State, without an NPDES permit for point source discharges issued by the Agency under Section 39(b) of this Act, or in violation of any term or condition imposed by such permit, or in violation of any NPDES permit filing requirement established under Section 39(b), or in violation of any regulations adopted by the Board with respect to the NPDES program.

Sections 306.102(a), 306.303 and 306.304 of the Board's Water Pollution Regulations provide as follows:

Section 306.102 Systems Reliability

- a) Malfunctions: All treatment works and associated facilities shall be so constructed and operated as to minimize violations of applicable standards during such contingencies as flooding, adverse weather, power failure, equipment failure, or maintenance, though such measures as multiple units, holding tanks, duplicate power sources, or such other measures as may be appropriate.

Section 306.303 Excess Infiltration

Excess infiltration into sewers shall be eliminated, and the maximum practicable flow shall be conveyed to treatment facilities.

Section 306.304 Overflows

Overflows from sanitary sewers are expressly prohibited.

Mr. Hauck alleges that on, or about, December 2, 1982, November 27, 1983, and November 19, 1985 the City's sanitary sewer manhole in Mr. Hauck's front yard was overflowing, thereby depositing sanitary sewage on Mr. Hauck's property and on the property of his surrounding neighbors in violation of Section 12(a), (b), (c), (d) and (f) of the Environmental Protection Act and in violation of 35 Ill. Adm. Code 306.102(a), 306.303 and 306.304. (R. 22, 25, 29 and 41). Although Mr. Hauck alleges that the violations occurred on the three days mentioned above, he contends that the overflowing of the City's sanitary sewers on Forest View Ave has been going on for approximately 15 years, each and every time there is 1.55 inches of rain or more in a 24-hour period. (R. 18). Mr. Hauck's prayer for relief requests that the City report to the Board, through the Agency, within sixty days from the date of the Board's Order, the status of all improvements, modifications and changes relative to the upgrading of its sewage treatment plant, its progress in abatement of storm water infiltration, and its program for termination of all illegal connections to sanitary sewers, together with all remedial action taken to improve its storm water sewers and to lessen the likelihood of overflow into sanitary sewers, and its program to assure against diminished pumping capacity as has occurred previously. (R. 33).

In support of his allegations, Mr. Hauck provided several photographs depicting the sanitary sewer manhole in his front yard overflowing (Pet. Exh. 3A, 5B, 5D) as well as several photographs depicting areas flooded by the sewer overflow and the overflow of the Salt Creek which flows through Mr. Hauck's backyard. (Pet. Exh. 6-1 thru 6-5). Mr. Hauck provided a copy of a service request form, dated November 19, 1985, which was filled out by a community service officer noting that the sewer on the southwest portion of Mr. Hauck's lot was overflowing. (Pet. Exh. 4). Mr. Hauck also provided a copy of a sampling report by the DuPage County Health Department, dated December 14, 1982, which conducted an analysis of the water on Mr. Hauck's lot. The report concluded that coliform was present in the water in amounts too numerous to count. (Pet. Exh. 1A). Lastly, Mr. Hauck submitted a letter addressed to him from the City, dated March 28, 1985, which acknowledged the receipt of the complaint filed by Mr. Hauck and stated that the sanitary sewer problems

which occur in front of Mr. Hauck's home and Manhole No. 9-6 are problems that the City is conversant with and which it is taking actions to resolve. The letter also stated that Manhole No. 9-6, which is the manhole on Mr. Hauck's lot, is such that periodic surcharges will occur out of it because of its low elevation. (Pet. Exh. 2).

As far back as 1978, there were a number of problems in the City relating to sanitary sewer surcharging. (R. 52). To alleviate this problem, the City, beginning in 1977, has been involved in an effort to rehabilitate its sanitary sewer lines and treatment plant. Specifically, an engineering firm was retained to conduct an evaluation of the City's sanitary sewer system. (R. 54). This evaluation recommended several alternatives the City should consider to reduce the amount of infiltration in the sanitary sewer system and also made recommendations as to the size and scope of the treatment plant reconstruction. (R. 55). After reviewing this evaluation, the City applied for a grant from the Illinois Environmental Protection Agency (Agency) for the actual design of two treatment plants and the sanitary sewer rehabilitation. (R. 57). As to the surcharging problem experienced by Mr. Hauck, the City, in 1983, retained another engineering firm who recommended that the City should proceed with the construction of the two treatment plants to increase the amount of pumpage capability at the plants and proceed with the sanitary sewer rehabilitation program. (R. 66). In April, 1984, the City received a grant from the Agency in the amount of \$6,005,250 (Resp. Exh. 4) to complete these improvements. (R. 68). These improvements are presently under construction and are scheduled to be completed in August, 1986. (R. 70). Lastly, the City began a program to eliminate illegal connections of storm drains, down spouts, footing tiles and sump pumps into the sanitary sewer system. (R. 72-74).

At the outset, the Board notes that at no time during this proceeding has the City denied Mr. Hauck's allegations. (R. 155-156). In fact, the City freely admits that overflows have occurred within the City's sewer system. (R. 158). However, the City contends the remedy to Mr. Hauck's problem has partially been provided, is being provided and will continue to be provided in the future, thereby requiring no action by the Board. (R. 158-159). The Board does not agree. Based on the evidence presented at hearing, the Board finds that the City has violated Section 12(a) of the Environmental Protection Act (Act) and 35 Ill. Adm. Code 306.102(a), 306.303 and 306.304. However, no proof was presented at hearing which would establish that the City has violated Sections 12(b), 12(c) and 12(f) of the Act. Thus, the Board finds that no violation of these Sections has occurred. Also, the Board finds that no violation of Section 12(d) of the Act has occurred. Section 12(d) of the Act relates to the deposition of contaminants on land which are disposed of in such a way so as to create a water pollution hazard. These

"deposits" are entirely separate from the deposit of contaminants on land which are contained in floodwaters.

The City freely admits throughout the hearing and in its closing argument that overflows occur within its sanitary sewer system during periods of wet weather and that problems exist in its sewer system causing the system to surcharge during wet weather conditions in violation of 35 Ill. Adm. Code 306.304 and 306.102(a). Also, the reports of the two engineering firms which conducted studies on the City's sewer problems concluded that the system experiences excessive infiltration during wet weather conditions. The City has attempted to rectify this problem with only a small portion of the infiltration being eliminated. (Resp. Exh. 1 and 2). Lastly, the surcharging of the system has caused the flooding of the land surrounding the surcharge area. These floodwaters which contain sanitary sewage combine with the floodwaters of the Salt Creek during periods of wet weather, thereby contaminating Salt Creek in violation of Section 12(a) of the Act.

As to the remedy, the Board, pursuant to Section 33(c) of the Environmental Protection Act, is to consider all the facts and circumstances bearing upon the reasonableness of the discharges involved including: the character and degree of injury to or interference with the protection of the health, general welfare and physical property of the people; the social and economic value of the pollution source; the suitability of the pollution source to the area in which it is located; and the technical practicability and economic reasonableness of reducing or eliminating the discharges from such pollution source.

The Board concludes that the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of Mr. Hauck and his neighbors is serious. The presence of sanitary sewage on the property of Mr. Hauck and his neighbors poses a threat to their health and general welfare in the form of elevated bacteria levels in the floodwaters surrounding their homes, offensive odors and the unsightly presence of sanitary sewage components on their lots. On the other hand, the social and economic value of the City's sewer system, while difficult to quantify, offsets to some degree the threat to these people. Without such a system, the wastes of the City would be discharged without treatment to nearby waterways, thereby posing a greater risk to the community. However, with a properly designed and maintained sewer system and plant, the City should be able to provide this valuable service without the health risk.

The Board also finds that the City's sewer system is suitable to the area in which it is located though necessary improvements to the system are needed to prevent the surcharging problem from occurring in the future. Lastly, the Board finds

that the possibility of reducing or eliminating the surcharging of the City's sewer's system is technically practicable and economically reasonable as evidenced by the City's voluntary undertaking of an extensive sewer rehabilitation program with partial grant funding from the Agency.

The Board concludes that the imposition of a penalty in this matter is unwarranted as it will not aid the enforcement of the Act or Board regulations. The City is undertaking an extensive sewer rehabilitation program at a cost of several million dollars and the imposition of a penalty in addition to this will not succeed in ensuring compliance with proper environmental practices. However, the Board will require that the City complete its sewer rehabilitation program and cease and desist from violating Section 12(a) of the Act and 35 Ill. Adm. Code 306.102(a), 306.303 and 306.304 six months after completion of the sewer rehabilitation program but no later than July 1, 1987. This will provide the City sufficient time to work out any problems in the new system. Also, the Board will require that the City submit quarterly reports to Mr. Hauck on the status of all improvements, modifications and changes relative to the upgrading of its sewer system and on the operations of the new system once it is operational. If Mr. Hauck feels that at any time the City is not complying with the Board's Order of today, he may file an action in circuit court to enforce this Order.

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

ORDER

It is the Order of the Illinois Pollution Control Board that:

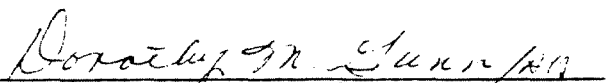
1. The City of Wood Dale, Illinois has violated Section 12 (a) of the Environmental Protection Act and 35 Ill. Adm. Code 306.102(a), 306.303 and 306.304.
2. The City of Wood Dale, Illinois shall complete its sewer rehabilitation program as expeditiously as is practicable as outlined in Exhibits 8-2, 8-3 and 8-4 consisting of 4 pages which are herein incorporated by reference.
3. The City of Wood Dale, Illinois shall cease and desist from violating Section 12(a) of the Environmental Protection Act and 35 Ill. Adm. Code 306.102(a), 306.303 and 306.304 six months after completion of its sewer rehabilitation program but no later than July 1, 1987.
4. The City of Wood Dale, Illinois shall submit quarterly reports beginning July 1, 1986 on the status of all improvements, modifications and changes relative to the

upgrading of its sewer system and on the operations of the new sewer system once it becomes operational to:

Mr. William J. Hauck
213 Forest View Avenue
Wood Dale, IL 60191

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 22 day of May, 1986 by a vote of 7-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board