



Hearing was held in this matter on January 5, 1978, in Havana, Illinois. On the opening of this hearing, a question arose concerning the competency of Don Boggs, attorney of record for the City, since his position as City Attorney had officially terminated on December 31, 1977 (R. p4). The City had appointed another attorney to replace Mr. Boggs, but the designate had not assumed responsibilities on the date of this hearing. The record also indicates that the Hearing Officer had not received a continuance motion from any representative of the Respondent prior to this hearing. The Board, therefore, finds that the Hearing Officer properly proceeded with the attorneys of record at this hearing with provisions for any interested person to testify (R. p4-16).

The evidence in this record shows that certain employees of the City of Havana installed approximately 300 feet of six inch sewer line under "A" street on March 15, 1977, in place of a four inch line that was causing back-up problems to homeowners in the vicinity (R. p32, p34). At one end, the six inch sewer line was connected at an elbow without a manhole to a four inch line serving two homes; this sewer line also received wastewater from a third home at a separate connection. At the other end, the six inch sewer line discharged to a manhole attached to 40-50 feet of four inch sewer line which flowed into a fifteen or eighteen inch sewer trunking leading to the Havana sewage treatment plant (R. p32-50, Exh. #3). Other testimony indicates that the sewer line was to be operational from the March 15, 1977, installation date through the date of this hearing (R. p45).

Mr. Charles Fellman, Manager of the State Permit Unit for the Agency, testified that the City of Havana had not obtained a permit for the above-described installation before the date of construction (R. p64-65). Mr. Fellman further stated that the Agency would not issue a construction permit in this case because of Respondent's failure to install a manhole at each elbow connection and its use of six inch sewer line instead of the eight inch required by the Agency for sewers serving more than one home (R. p69-70). Mr. Fellman also pointed out that since the original construction, the City of Havana had obtained a construction permit for the installation of an eight inch sewer line serving some five homes including the three served by this six inch sewer line (R. p65, p75-6).

In view of this evidence and the admissions in this record, the Board finds the City of Havana in violation of Rules 951(a) and 952(a) of Chapter 3 and Section 12(b) of the Act for constructing and operating this six inch sewer line without the necessary permits.

In mitigation, the City presented testimony that its employees considered this placement of 300 feet of sewer line as repair work requiring no Agency permits (R. p53). This conclusion was reached without consulting the City Engineer (R. p57-8, pl54) or others familiar with Agency permit procedures. Other testimony has indicated that operation of the six inch sewer line to the date of the hearing has caused no environmental damage and that a fill-up or back-up is unlikely (R. p55-74a).

The record shows that the City was properly informed of correct permit procedures for it to file for a construction permit on November 21, 1977, to replace the six inch sewer line installation (R. p76, pl18).

Disputes appear in the record concerning the ownership of the sewer line. Affidavits from three City employees who installed the sewer stated that they believed that the sewer line in question was a private sewer not owned by the City of Havana (Exh. #4). This belief is supported by testimony of a plumber in the City of Havana (R. pl62-3) and by Mayor Ralph Elliott (R. pl52, Exh. #4). Other testimony from the Chairman of the City Council's Water and Sewer Committee and the Agency supports the finding that the City of Havana owns, operates, and maintains the sewer system located under its public streets (R. p94, pl19). While the ownership policies of Havana sewer system are in dispute, the evidence submitted to this record will not overturn Respondent's admission in this action that the City of Havana is the owner and operator of the sewer system located within the City limits (Exh. #1).

In considering Section 33(c) factors of the Act, the Board finds that an improperly installed sewer line is of doubtful value which diminishes significantly in the event of a back-up or other malfunction. The City's present administration has aptly demonstrated that a properly permitted sewer is technically practicable and economically reasonable to install before there are any indications of problems with the six inch line.

Under usual circumstances, the Board would impose a penalty as necessary to aid in the enforcement of the Act to discourage and eliminate future substandard sewer installations in contravention of the regulations and the permit requirements. In this particular instance, the City may be more victim than perpetrator of these violations. The record indicates that the current Mayor brought this matter to the attention of the Agency (R. pl48), and the City Engineer, who stated that he had no knowledge of this improper installation,

would not have approved it, and further testified that this unpermitted sewer was installed in violation of City ordinances (R. p161).

In view of the foregoing, since the persons responsible for this illegal installation are not directly before us, the Board does not feel that the purposes of the Act would be served by imposition of a penalty against the City for violations found herein.

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


ORDER

The City of Havana is found to have violated Rules 951(a) and 952(a) of Chapter 3: Water Pollution Regulations and Section 12(b) of the Environmental Protection Act.

The City of Havana shall cease and desist further violations of the Board Rules and the Act in the operation of the 18 inch sewer line described in detail in the Opinion within 30 days of the date of this Order.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 6<sup>th</sup> day of July, 1978 by a vote of 4-0.

  
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Christan L. Moffett, Clerk  
Illinois Pollution Control Board