

ILLINOIS POLLUTION CONTROL BOARD  
October 4, 1978

EDWARD J. SVOBODA and )  
DORIS SVOBODA, his wife, )  
 )  
Complainants, )  
 )  
v. ) PCB 77-328  
 )  
DUPAGE PUBLIC WORKS DEPARTMENT, )  
 )  
Respondent. )

MR. DONALD MESSENGER APPEARED ON BEHALF OF COMPLAINANTS.  
MR. CHARLES RUTH APPEARED ON BEHALF OF RESPONDENT.

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

This matter arises out of a Citizens' Complaint filed by Edward and Doris Svoboda on December 9, 1977, against the Respondent DuPage Public Works Department (Department). An Amended Complaint against the Department was filed on January 18, 1978, and charged the Respondent with violations of Rules 601 and 602 of Chapter 3: Water Pollution Rules, and Section 12(a) and (b) of the Environmental Protection Act. The Amended Complaint alleged that Respondent failed to minimize malfunctions which caused or allowed excessive infiltration into and overflows from its sanitary sewers which backed up into Complainants' basement on August 8, 1977, and on September 1, 1977. After reviewing the Amended Complaint and Respondent's Motion to Dismiss filed on December 23, 1977, the Board denied Respondent's Motion and scheduled the matter for hearing.

It is a well-established principle that public works departments within this State are responsible for the pollutional consequences of overflows from the combined and sanitary sewers under their control. EPA v. City of Champaign, PCB 71-51C, 9 PCB 233 (1973); Hull v. City of Griggsville, 330 N.E.2d 293 (1975). This requirement is derived from Section 12 of the Environmental Protection Act and Rules 601 and 602 of Chapter 3: Water Pollution Rules and Regulations. Section 12(a) and 12(d) of the Act prohibit the discharge of contaminants into the environment or their deposition on land so as to cause water pollution or to create a water

pollution hazard. Section 12(b) of the Act requires that pollution control equipment be installed and operated in accordance with their permit conditions to prevent violations of the Act or Rules.

In Chapter 3, the applicable provisions of Rule 601 require the owners and operators to construct and maintain their sewage treatment works and associated facilities so as to minimize violation of the Act and the Rules during periods of flooding, adverse weather and power or equipment failure. Rule 602(b) expressly prohibits overflows from all sanitary sewers and also requires that excess infiltration into sewers be eliminated and the maximum practicable flow be transported to their treatment facilities.

Before considering the merits of this case, the Board must deal with Respondent's objections to evidence and to certain exhibits offered by the Complainants which were reserved to the Board by the Hearing Officer. The Board has reviewed these objections and will overrule Respondent's objections to testimony concerning the extent of damages (R. 23-24); the amount of damages (R. 90); and to the introduction of Exhibits 1, 2, 3, pictures depicting the extent of the back-up into Complainants' basement on August 8, 1977 (R. 35) in that each is relevant to the allegations of water pollution against the Respondent.

In this case, Complainants are one of twenty-eight residents in Argonne Ridge Estates and Hinsdale Timber Lake Estates serviced by an eight-inch sanitary sewer line which is tributary to a lift station at Argonne Ridge Drive that pumps the sewage through 285 feet of four-inch force main to a ten-inch sanitary sewer line under Birnam Trail Road (R. 52, 95-96). While this lift station is designed to handle maximum loadings of 85 gallons per minute and to serve population equivalents of forty-eight, the Complainants experienced sanitary sewer back-ups into their basement of 15 inches on August 8, 1977, and two inches on September 1, 1977, both immediately after heavy rains (R. 11, 24, 27, 28, 98). The record also indicates that this sewer line has overflowed into the half-basement of Mr. Filippi on July 12, 1977, and into other basements on this sanitary line under similar conditions (R. 56-57, 113).

The Respondent Department stipulated that it is directly responsible for the operation of the sanitary sewer line and the lift station at Argonne Ridge Drive and that as a result of the cessation of operation of the lift station on August 8, 1977, and on September 1, 1977, Complainants' basement filled with discharges from the sanitary sewer (R. 10). Complainants' witnesses raised the issue that storm water inflow caused or contributed to the lift station malfunction and to this sanitary sewer overflow problem.

The principal witnesses for Complainants include Edward Svoboda and Lorence Filippi who testified at length with respect to the sanitary back-ups into their basements and the circumstances surrounding the separate occasions. Both witnesses testified that they experienced back-ups in their basements after heavy rain storms without power failures when the flashing light alarm mechanism at the Argonne Ridge Drive lift station indicated a malfunction (R. 27, 31, 32, 41, 56-57, 101). Mr. Filippi had observed the flashing light at the lift station after heavy storms and, on a few occasions, during good weather (R. 60). On August 8, 1977, Mr. Filippi testified that storm water from heavy rains had flooded Argonne Ridge Drive at 5:00 a.m. because the storm sewers were clogged with construction debris (R. 79). Soon thereafter, Mr. Svoboda experienced water "boiling" out of his floor drain until it attained a height of fifteen inches at 8:30 a.m. (R. 20, 24).

Robert Hadley, Superintendent of DuPage County Public Works Department, testified that failure of the pumps and normal use of the sewer would not cause the sewage to gush up into Complainants' basement (R. 130). In addition, Mr. Hadley stated that inflow could be the result of illegal connections not presently known to the Department which are contributing to or causing overflow problems faced by the residents in the Argonne Ridge Drive area (R. 108, 131-132).

According to the Respondent, the Argonne Ridge Drive lift station is inspected routinely three times per week (R. 140). Raymond Borowski, the Department's Field Supervisor, testified that when a malfunction occurs personnel are dispatched to correct the malfunction or failure as quickly as possible (R. 142-48). Mr. Borowski claimed that the malfunctions at the Argonne Ridge Drive lift station on August 8, 1977, and on September 1, 1977, were the result of momentary power outages or electrical fluctuations which caused the pumps to cease operation until manually reset (R. 140-41). In other testimony, Mr. Borowski stated that the alarm mechanism at the lift station is activated by either pump malfunction or when the level of liquid in the wet well exceeds the normal level (R. 140-41, 152-58, 160).

In view of the evidence surrounding these occurrences, storm water inflow into the system is causing or contributing to the back-ups experienced by the Complainants. It is also apparent that the Department has failed to take corrective action to identify inflow sources causing or contributing to these sanitary sewer overflows and implement reasonable measures to prevent their recurrence. While Complainants' witnesses do not provide direct evidence of specific points of inflow or infiltration into the Argonne Ridge sanitary sewer line, the Board finds the evidence before us is sufficient to constitute

violations of Rules 601(a) and 602(b) of Chapter 3 and Sections 12(a) and 12(b) of the Act by the Department for causing or allowing overflows into Complainants' basement on August 8, 1977, and on September 1, 1977.

At the conclusion of Complainants' case-in-chief, Respondent moved to dismiss this action against them (R. 84). Having reviewed the evidence in the record at that point, the Board will hereby deny Respondent's Motion to Dismiss.

After considering the provisions of Section 33(c) and other factors in mitigation, the Board finds that no useful purpose will be served at this time by the assessment of a penalty. The Board will, however, grant relief sought by Complainants and will order the Department to cease and desist violations of the Act and Rules by adopting a program for remedial action for the modification, improvement or changes necessary to upgrade the sanitary sewer system or the lift station to eliminate future sewer overflows into the basements of those residents serviced by the Argonne Ridge Drive lift station.

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

#### ORDER

1. The DuPage Public Works Department is found to have violated Rules 601(a) and 602(b) of Chapter 3: Water Pollution Rules and Regulations and Sections 12(a) and 12(b) of the Environmental Protection Act on August 8, 1977, and on September 1, 1977.

2. The Department shall cease and desist from the operation of the Argonne Ridge Drive lift station and the sanitary sewer connected thereto in a manner which causes or contributes to sanitary sewer back-ups in violation of the Act and the Rules.

3. The Department shall conduct an investigation to determine the precise cause and any factors contributing to the back-ups in the sanitary sewer line tributary to the Argonne Ridge Drive lift station. The investigation should include the following: an infiltration and inflow study of the sanitary sewer line, a study of the design and operational reliability of the lift station at Argonne Ridge Drive, inspection of all manholes on the line, and such other inquiry as may be necessary to identify the causes of these back-ups. The conclusions and recommended action derived from the investigation shall be submitted to the Complainants and the Illinois Environmental Protection Agency for approval within ninety days from the date of this Order. The Department shall initiate the necessary corrective action thirty days after approval by the Complainants and the Agency and the issuance of any required permits.

IT IS SO ORDERED.

Mr. Goodman abstained.

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

  
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Christan L. Moffett, Clerk  
Illinois Pollution Control Board