

ILLINOIS POLLUTION CONTROL BOARD
April 17, 1972

NORMAN NACHTRIEB)
)
 v.) PCB 72-8
)
 SOUTH PALOS TOWNSHIP)
 SANITARY DISTRICT)

Norman Nachtrieb, pro se
Arthur C. Thorpe, Attorney for South Palos Township Sanitary District

Opinion and Order of the Board (by Mr. Aldrich):

Norman Nachtrieb, an interested citizen of the South Palos Township Sanitary District, filed a complaint against said District on January 7, 1972. The complaint alleges that the District is unable to complete a sanitary sewer system for residents of the area for financial reasons. Complainant asks the Board to order the District to complete the sewer system and to issue the necessary bonds to finance its completion. A hearing was held March 22, 1972.

The facts in the case are not in dispute. The inhabitants of the District are presently disposing of their sewage through privately owned individual septic systems. Soil conditions in the area are such that the septic systems are ineffective because the soil cannot safely absorb the sewage (R. 3). As a result, the discharge of sewage is causing pollution of both the ground and the air in the District. The ground pollution is also threatening to contaminate the water supply of the District's inhabitants.

In order to eliminate the aforementioned problems, the District proposed to construct a sanitary sewer system. A general obligation bond issue of \$250,000.00 was approved by the District's inhabitants March 21, 1970, which exhausted the statutory limit of the bonding power of the District. An engineer estimated the total cost of the project to be \$1,100,000. Accordingly, special assessments in the amount of \$849,905.91 were made against the inhabitants of the District which together with the \$250,000 in bonds would meet the estimated total cost. The lowest construction bid received, however, was \$1,140,411, considerably higher than the estimate of \$701,725 (R. 6,7). Nevertheless, the lowest bid was accepted and construction of the sewer system was begun. At the time of the hearing, the project was about 85% complete, but the District lacks about \$400,000 in monies to complete the project (R. 7). Applications for State and Federal funds have been made but the likelihood of receiving these funds is unknown. The complaint alleges that the contractor will cease his construction operations if payments to him are not continued.

Complainant Nachtrieb asks that we order the District to complete the sewer system thereby abating pollution of the ground and air and eliminating the threat of a contaminated water supply. The District takes the position that it has taken all the steps required by law to install sanitary sewers but that its funds have been exhausted because of inflation (R. 13). The District agrees, however, that a pollution problem does exist and that it is essential that the sewer system be completed. We agree. Considering the heavy investment in the sewage system by the inhabitants of the District and the fact that the project is already 85% finished, completion of the system is the only rational approach at this point in time. We shall order the District to complete the sewer system expeditiously.

Complainant specifically requests that, pursuant to the provisions of Section 46 of the Environmental Protection Act, we order the District to issue bonds necessary to finance the completion of the sewage system. Mr. Nachtrieb notes that the inhabitants of the District face a considerable financial burden because of debts already incurred in connection with the sewage system. The issuance of general obligation bonds to finance completion of the project would spread the tax load over a number of years, thereby easing the immediate burden somewhat. Whatever the merits of this argument, the decision to issue general obligation bonds or to use alternative means of raising funds rests with the District, not with this Board. Our order today requires the District to complete the sewer system as soon as feasible in order to abate pollution. To comply with this order the District is authorized pursuant to Section 46 to issue general obligation or revenue bonds without referendum and, as we have held in previous cases, without regard to any statutory limit to bonded indebtedness (cf. League of Women Voters v. North Shore Sanitary District, PCB 70-7, March 31, 1971; City of Marion v. EPA, PCB 71-225, October 28, 1971). No specific order to issue bonds is necessary. In ordering that the sewer system be completed as soon as feasible we merely say that financial considerations must not be allowed to cause undue delay in completion of the project.

The District asks that if the Board orders the issuance of bonds for completion of the sewer system such order be deferred for at least six weeks (R. 14, 15). In making this request, the District reasons that action may be taken on its applications for Federal and State funds within a period of six weeks. There is currently at the federal level legislation under consideration to reimburse municipalities for sewage disposal improvements that have already been initiated or completed but this has not yet been enacted. As indicated later, we shall accede to the District's request for a short delay.

The District further argues that within six weeks a decision may be made in a lawsuit in the Appellate Court of the Second District construing the Board's power to order the issuance of bonds by municipalities or sanitary districts. Though it is our view that the time for pollution abatement is now, we recognize the dilemma of the District with respect to decisions as to Federal or State assistance and the Appellate Court decision. Until a decision is available either with respect to financial assistance from Federal or State sources, or by the Appellate Court, the District risks having monies committed without hope of reimbursement or without proper authority to issue the necessary bonds. Unless the Appellate Court rules otherwise, the District by virtue of the order we enter today has the authority to issue the necessary bonds. We shall at this time grant the District until June 1, to submit a statement indicating the earliest date on which completion of the sewage system can reasonably be expected and to file reports at monthly intervals thereafter indicating what progress has been made toward completing the project.

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

ORDER

1. South Palos Township Sanitary District shall take all necessary steps for the abatement of pollution within its boundaries by the completion of its sanitary sewage system.
2. South Palos Township Sanitary District shall, by June 1, 1972, submit to the Pollution Control Board a statement indicating the earliest date on which completion of its sanitary sewage system can reasonably be expected.
3. Following compliance with #2 of this order, South Palos Township Sanitary District shall file with the Pollution Control Board monthly reports indicating what progress has been made toward completing the sanitary sewage system and when completion can be expected.

I, Christan L. Moffett, Clerk of the Pollution Control Board, certify that the Board adopted the above Opinion and Order this 17 day of April 1972, by a vote of 4-0.



