

ILLINOIS POLLUTION CONTROL BOARD
March 19, 1981

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 v.) PCB 80-112
)
 PETER OCCHIPINTI,)
)
 Respondent.)

MR. WILLIAM J. BARZANO, JR., ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF THE COMPLAINANT.

MR. JAMES K. YOUNG, ATTORNEY AT LAW, APPEARED ON BEHALF OF THE RESPONDENT.

OPINION AND ORDER OF THE BOARD (by I. Goodman):

This matter is before the Board on the June 2, 1980 complaint brought by the People of the State of Illinois (The People) alleging that Peter Occhipinti (Occhipinti) submitted inaccurate information in a permit application and constructed certain sewer improvements in violation of the conditions of his permit. Hearing was held in this matter on October 20, 1980, which included testimony by area citizens.

The permit at issue in this matter, No. 1978-HP-0531, issued to Occhipinti by the Illinois Environmental Protection Agency (Agency) on March 28, 1978 authorizes the construction and operation of a sanitary sewer extension within the Village of Lombard, DuPage County, Illinois. The permit required the construction of three manholes and the placement of class bedding (gravel cradle, type C) under the entire length of the sanitary sewer extension.

The People allege that Occhipinti constructed only two manholes instead of the required three, and failed to place the required class bedding under a significant portion of the extension, without notification to the Agency pursuant to both the Board's rules and the terms of Occhipinti's permit. More importantly, The People allege that Occhipinti made certain misrepresentations in his application for the permit in that he indicated that the capacity of the downstream sewer system was adequate to transport his proposed additional wasteload where in fact it was not. Thus The People allege violations of the condition of the permit as well as Section 12(a) of the Illinois Environmental Protection Act (Act).

Occhipinti responds that these changes in construction were done with the full knowledge of the Village of Lombard, the owner of the sewer system to which Occhipinti's extension is tributary, and that the Village had informed Occhipinti that it was not necessary to submit revised plans to the Agency. In addition, Occhipinti alleges that an employee of the Village had stated that it was not necessary to place any gravel bedding under the sewer extension. The following day, however, the Village demanded that part of the extension be uncovered for inspection of the bedding. Occhipinti refused and stated that there was no bedding under a certain portion of the extension. The Village subsequently refused to service Occhipinti's extension until such time as Occhipinti uncovered the extension for it's inspection (Stip.3).

There are two issues before the Board in this matter. The first issue is whether Occhipinti misrepresented the capacity of the downstream sewer system in his application for a permit, thus bringing into question the validity of the permit as issued. The second issue is whether Occhipinti violated the conditions of the permit and the Board's rules by constructing the extension in a manner other than that authorized by the permit.

In regard to the issue of misrepresentation, Occhipinti admits that he indicated to the Agency in the application that the capacity of the downstream sewer system was adequate to transport the proposed additional design wasteload to the Village's treatment works (Tr.26). In addition, Occhipinti indicated on the permit application that a storm sewer was provided, although this is connected to the sanitary sewer at a point approximately 60 feet downstream from Occhipinti's extension. In fact, Exhibit 11 indicates that one ten-inch and one twelve-inch storm sewer and three eight-inch sanitary sewers all discharge into one twelve-inch sanitary sewer within a few feet of Occhipinti's sewer extension. This single twelve-inch sanitary sewer thereafter runs tributary to the Lombard Sewage Treatment Plant.

Exhibits 5-9 are stipulated testimonies of four persons who reside immediately downstream, and one person upstream, of Occhipinti's sewer extension who are connected to the single twelve-inch sanitary sewer which receives the combined discharges of the aforementioned sewers (Exhibit 11). The testimony of all five witnesses is essentially the same. All indicate they have endured sewer backups in their basements since they moved into the area, the first incident occurring in 1972 and later incidents continuing through 1977 unless standpipes had been installed in the basements. Subsequent to installation of standpipes, sewage was observed backing up into the pipes even after 1978. The majority of the problems occurred after rain storms; however, there are odor problems during dry weather conditions.

The Board notes that an ordinary person could reasonably expect an overload and a backup problem where three eight-inch sewers, a ten-inch sewer, and a twelve-inch sewer all discharge into a single twelve-inch sewer. However, Occhipinti is not merely an ordinary person, but rather a contractor assumedly knowledgeable with regard to sewers and their capacities (Resp.Br.1). There is evidence of sewer backups immediately downstream of Mr. Occhipinti's extension as far back as 1972, nine years ago, and continuing through the time when he made indications as to capacity in his permit application. Occhipinti chose not to attach a sketch of his proposed sewer layout to the application, as requested by the Agency, in order to reduce the time of review (Tr.30).

Considering all the evidence in the record, the Board concludes that Occhipinti misrepresented the condition of the downstream sewers by alleging the existence of sufficient capacity of the downstream sewer system to transport his proposed additional design wasteload to the treatment works in his permit application. Occhipinti argues that he had to answer "yes" to the permit capacity question in order to obtain the permit, for otherwise applicants cannot obtain permits. This is, of course, precisely the point. Had Occhipinti not misrepresented the condition of the downstream sewer he would not have received a permit.

Occhipinti argues "estoppel" against the Agency, stating that he went forward with his construction project and expended a great deal of resources in reliance upon the permit issued by the Agency. Having found that Occhipinti misrepresented a fact of major materiality to the issuance of the permit, the Board cannot accept a plea of reliance upon a permit so obtained. Occhipinti argues that a verdict of estoppel against the Village by the Circuit Court with regard to an attempt by the Village to revoke Occhipinti's building permits should somehow also apply to the Agency's issuance of the permit. The Board can find no relevance between that Appellate Court decree and this action.

It is a fact that Occhipinti has proceeded with construction of the buildings and other improvements during the time period between March 28, 1978 when he obtained his Agency permit and June 2, 1980 when The People filed their complaint. Occhipinti has acquired a \$450,000 mortgage and is bound by contract for work to install storm sewers, sanitary sewers, street lights and other improvements costing about \$80,000. There is no question that this would be a heavy burden for Occhipinti to endure should his permit be revoked at this late date. On the other hand, there are citizens whose rights to a clean and healthy environment, especially as to enjoyment of their homes, will be seriously prejudiced every time it rains due, in part, to Occhipinti's misrepresentation on his permit application.

In formulating a remedy the Board has attempted to correct the adverse effects on the sewer system caused by Occhipinti's

misrepresentation without the necessity of revoking his permit. The Board will, therefore, order Occhipinti to make certain modifications to his sanitary and storm sewage systems, including installation of holding tanks to store the wastewater from the buildings during rain storms for later discharge to the sewer system, installation of water-saving devices in the buildings to reduce the wastewater flow, and disconnection of any roof drain downcomers to the storm sewer system. The Board shall order Occhipinti's permit stayed until such time as he complies with the Board Order herein.

With respect to the second issue, that of the unannounced change in the design of the sewer extension, the parties have filed and later revised a Stipulation of Fact and Suggested Relief which calls for Occhipinti to post a performance bond to cover the replacement cost of the sewer extension for a period of ten years. The terms of the bond call for Occhipinti to correct any malfunction that might occur due to the design change within thirty days of notice of such malfunction. The stipulated amount of the proposed performance bond is \$3,000. Should this amount be insufficient to cover all necessary expenses to adequately correct any malfunctions, Occhipinti shall reimburse the Agency for all such expenses so incurred. This approach is found to be the most reasonable method to protect the environment without placing undue hardships on any party or person. In determining the relief necessary for the violations found in this case the Board has taken into consideration all the facts and circumstances in light of the specific criteria delineated in Section 33(c) of the Act. The Board, therefore, accepts the proposed stipulation as a suitable remedy for this violation.

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

ORDER

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

1. Peter Occhipinti is found to be in violation of the the conditions of Permit No. 1978-HB-0531 issued by the Illinois Environmental Protection Agency on March 28, 1978 and of Section 12(a) of the Illinois Environmental Protection Act.
2. Peter Occhipinti shall install one or more holding tanks in the sanitary sewer line receiving discharge from his subdivision of a design and capacity to be determined by the Illinois Environmental Protection Agency so as to restrict flow to the sanitary sewer system of the Village of Lombard during rainstorms.
3. Peter Occhipinti shall install water-saving devices in his subdivision to reduce as much as possible the sanitary flow therefrom.

4. Peter Occhipinti shall disconnect all roof drain downcomers, if any, from the stormwater sewer system of the Village of Lombard.

5. Peter Occhipinti shall comply with all the terms and conditions of the Stipulation of Fact and Suggested Relief filed on October 31, 1980, as modified by the Notice of Agreed Upon Amount of Performance Bond filed on November 26, 1980, which is incorporated by reference as if fully set forth herein.

6. Permit No. 1978-HB-0531 issued by the Illinois Environmental Protection Agency on March 28, 1978 to Peter Occhipinti is hereby stayed with respect to discharges to the Village of Lombard's sewer system until such time as Paragraphs 2, 3, 4 and 5 above have been executed.

7. The Board shall retain jurisdiction in this matter.

Mrs. Anderson and Mr. Werner concurred.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order were adopted on the 17th day of March, 1981 by a vote of 5-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board