

ILLINOIS POLLUTION CONTROL BOARD
February 19, 1981

JOHN S. BURNS,)
)
 Complainant,)
)
 v.) PCB 80-31
)
 VILLAGE OF WESTERN SPRINGS,)
)
 Respondent.)

MR. JOHN R. HIEBER APPEARED ON BEHALF OF THE COMPLAINANT.
MR. ROBERT A. KNUTI APPEARED ON BEHALF OF THE RESPONDENT.

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

John S. Burns filed the complaint in this matter on February 14, 1980, alleging that the Village of Western Springs has violated Rules 601(a), 602(b), 602(d)(2) and 602(d)(3) of Chapter 3 of the Board's Regulations: Water Pollution, and Sections 11(a)(1), 12(a) and 12(d) of the Environmental Protection Act (Act). Hearing was held on October 21, 1980. No members of the public were present. Final briefs were filed on February 18, 1981.

The basis of the complaint is a series of floods which have occurred on Mr. Burns property between August 25, 1972 and August 10, 1980 (R.15-69). Mr. Burns testified that after a bad storm on August 25, 1972, his basement flooded with water, toilet paper, and human waste. This was caused by a back-up of a toilet in his basement. His exterior land at 4419 Clausen Avenue was completely covered in water (R. 15-17). A similar back-up occurred on September 17, 1973, after which he removed his basement toilet (R.17-18). Water had also entered his basement through the basement windows (R.26). On April 3, 1974, again during a heavy rain, water entered his basement through the sump pump, the windows, and the back door (R.29). During this event Mr. Burns also testified to water and paper coming up through a manhole near his property (R.31). Similar events occurred on August 11 and September 24, 1974; April 18 and 19, 1975; June 12, 1976; and on various other dates through and including August 10, 1980 (R.32-69). However, on a few of these occasions water did not enter his house, and only during the June 12, 1976 occurrence did he observe water coming up through the street manhole (R.47), and he did not testify to human wastes. However, water in his yard was sometimes as much as 12-18" deep (R.47 and 69). Photographs supplement much of this testimony.

At the close of complainant's case, Western Springs moved for dismissal. For the reasons given below, that motion is granted with respect to Rules 601(a), 602(b), 602(d)(2), 602(d)(3) and Sections 11(a) and 12(d) of the Act.

A violation of Rule 601(a) cannot be found against Western Springs because it was not shown to own or operate a treatment works, and, therefore, could not have operated it improperly (R.160).

A violation of Rule 602(b) cannot be found because there was no showing of excess infiltration, nor of the conveyance of less than the maximum practicable flow. Further, Western Springs has a combined sewer system rather than separate sanitary sewers in the pertinent area such that there could not have been overflows from sanitary sewers (see Comp. Ex. 11, pp. 11 and 18).

A violation of neither Rule 602(d)(2) nor 602(d)(3) cannot be found since those rules simply establish compliance dates for Rule 602(c) of which no violation is alleged.

Section 11(a) of the Act cannot be violated in that it simply expresses legislative intent.

Section 12(d) is also inappropriate in that any deposits created upon the land were intended to pass through the sewer system in the first place and only threaten to return to that system.

Thus, the only possible violation which remains is that activity proscribed by Section 12(a) of the Act. That section generally disallows water pollution which is defined in Section 3 as contamination of waters of the state. Waters of the state is in turn broadly defined to include "all accumulations of water." While some exceptions have been established by the Board from this broad definition, none of those exceptions include waters which are in areas accessible to the public, as are the waters in this case. Thus, when the combined sewer flow is discharged from street manholes into rainwater on the street, water pollution is caused and section 12(a) has been violated. That is what has happened in this case. Dr. William Bauer, an expert witness testifying on behalf of Western Springs, testified that the sewers had backed up and that they held both sanitary wastes and storm water (R.175-176 and 180-181).

Thus, the Board finds that Western Springs has violated Section 12(a) of the Act, but also finds that no penalty should be imposed.

Testimony indicates that neither human wastes nor manhole back-ups have been observed during flooding incidents since June 12, 1976, and it may be that pollution of these surface waters in this fashion has not occurred since that time. Further testimony indicates that even when the sewers back-up, the sanitary sewage is diluted by a factor of ten to twenty times by the storm water flow (R.181). This would be diluted even more by surface

water ponding. Thus, the possibility of injury to the public due to contamination of this water is not great except for children wading in the water or playing amid sewage materials remaining upon the land.

Secondly, the technical feasibility and economic reasonableness of eliminating or reducing the pollution is questionable. Western Springs has decided, based upon a study done by Mr. Bauer, that its policy regarding flooding should be to accept the present system (Comp. Ex. 9 and R. 178). Additional testimony indicates that if Western Springs were to expend up to one million dollars to upgrade its system, ponding would be only slightly reduced (R.142-144). However, it may well be economically reasonable to eliminate or reduce the sanitary sewer component of that ponding (R.160).

Third, the Board does not question the value of the sewer system or its location. However, ponded water contaminated by sewage in an area available for public use diminishes that value.

Therefore, the Board will order that Western Springs cease and desist from such violations and that it work with the Agency to determine and implement changes in its sewer system to eliminate the surcharge of human wastes into ponded street surface waters.

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


ORDER

1. The Village of Western Springs has violated Section 12(a) of the Environmental Protection Act.
2. Within 180 days of the date of this Order, the Village of Western Springs shall cease and desist from violating Section 12(a) of the Act.
3. Within 90 days of the date of this Order, the Village of Western Springs shall submit a compliance plan acceptable to the Environmental Protection Agency to eliminate the surcharge of human wastes into ponded street surface waters.

IT IS SO ORDERED.

Joan Anderson abstains.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 19th day of February, 1981 by a vote of 4-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board