

ILLINOIS POLLUTION CONTROL BOARD  
July 10, 1980

THOMAS E. BROGAN, JOANNE BROGAN, )  
BON H. KOO, KAREN KOO, )  
JAMES HAYES, HELEN HAYES, and )  
ROBERT CHAMBERLIN, )  
 )  
Complainants, )  
 )  
v. ) PCB 79-11  
 )  
CITY OF PALOS HILLS, et al, )  
 )  
Respondents. )

MRS. JOANNE BROGAN APPEARED PRO SE.

ROBERT EMMETT NOLAN, ESQUIRE (NOLAN, O'MALLEY & DUNNE) APPEARED ON BEHALF OF RESPONDENTS.

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

This matter is before the Board upon the January 12, 1979 complaint of Thomas E. Brogan, Joanne Brogan, Bon H. Koo, Karen Koo, James Hayes, Helen Hayes and Robert Chamberlin (Brogan) alleging that the City of Palos Hills, Illinois (City) has violated certain provisions of Chapter 3, the Board's Water Pollution Control Regulations (Rules). Four hearings have been held in this matter. At the end of Complainants' case in chief, Respondents moved the Board to dismiss the action. The motion is denied.

The subject of the complaint herein is a lift station owned and operated by the City which is located on the northwest corner of Brogan's property on Stratford Lane in a subdivision of the City known as Runnymede. The lift station is a part of the City's sanitary sewer system, servicing twenty-three buildings through a gravity sewer system and wet well and discharging against a head of approximately twenty-five feet to another segment of the City's sewer system (Respondent's Exhibits 1 and 2). Brogan alleges that due to poor planning and maintenance the lift station has overflowed, causing an unsightly and odoriferous discharge onto one respondent's property which poses a health hazard to the community and in particular to this respondent's children. The City responds that it has done and continues to do everything possible to abate the overflows and denies responsibility for their occurrence.

A considerable part of the hearing record consists of the

discussion of such matters as trespass, easements, fraud and deception, etc. The Board has neither the power nor the inclination to address these issues as they pertain to this case and shall consider only the issue of environmental harm caused by violation of the Board's Rules.

Brogan alleges that the City has violated Rules 601(a) and (b) and 602(b). Rule 601 addresses system reliability including malfunctions and spills. Rule 602 addresses combined sewers and treatment plant by-passes; part (b) thereof specifically addresses infiltration and overflows from sanitary sewers. The City acknowledges the allegation of a violation of Section 12(a) of the Illinois Environmental Protection Act (Act).

At the hearings Mr. Koo, who lives next door to the lot which contains the lift station, testified that the lift station overflowed through his backyard to a forest preserve which contains a small lake (R.60). He testified that the lift station had overflowed numerous times between 1972 and 1978 and that he had notified the City of the problem. Mr. Koo's best estimate of the number of times the lift station had overflowed was three to four times a year (R.67). The witness described the raw sewage as "shooting out of the manhole" atop the lift station wet well (R.69). The witness indicated that a good portion of his backyard and part of a neighbor's backyard have been covered by the discharge at times. The witness appeared to be certain concerning the overflows up to 1978 but was somewhat unsure concerning overflows during 1979. Although not stated in direct testimony by Mr. Koo, the record generally indicates that he had dug a ditch to intercept the overflow and direct it off of his property some time prior to 1978.

Witness Chamberlin, who lives in the vicinity of the lift station, stated that he had become involved with the problem in 1977 and had attended four or five different Palos Hills City Council meetings at which the problem concerning the lift station was discussed (R.106). Chamberlin also stated that he had noted that the lift station had been without a lock for a period of three to four months (R.109).

Witness Thomas Brogan testified regarding an overflow which occurred in 1978. He stated that he and a number of other neighbors saw the water and other residue flowing out of the sewer (R.138).

Witness Joanne Brogan testified that her daughter became quite ill and that she attributed the illness to the sewer overflow problem (R.386-400). The witness testified that Mr. Koo had indeed dug a ditch to contain the overflow of the sewage but that, subsequently, fill had been placed so as to create a "cesspool" in her yard (R.401). During cross-examination the witness stated that the last overflow that she had noted occurred on October 29, 1978 (R.415). This particular overflow was documented by photographs contained in Complainants' Group

Exhibit 9.

Witness Gizewski of the Cook County Department of Public Health testified that that Department had been contacted concerning the overflows, had made an investigation, and had notified the City. Witness Shlensky, Health Officer for the City, testified that he had no knowledge of the problem of the lift station, had never been informed of the problem of the lift station, and had never talked to anyone concerning the problem with the lift station (R.457). Cross-examination of this witness indicated that the City apparently has two Health Officers who maintain separate records.

Other witnesses called by Brogan testified generally to the lift station overflow problem and that the City had indeed been on notice concerning the overflow problem touching the various properties. Several witnesses raised issues outside the scope of this action; such testimony is not considered.

The general conclusions from the testimony and the report which is Complainants' Exhibit 3 herein are that the lift station type is outdated, has deterioration of its concrete components, and is in need of a system to warn the City when it was out of service. The report, produced for the City of Palos Hills subsequent to the filing of this complaint, specifically concludes that:

1. the existing control system should have an upgraded maintenance schedule or should be replaced with a more modern and more reliable type of control;
2. a high water alarm installation consisting of a battery-operated alarm light, to be operated in conjunction with an existing telephone alarm, should be installed; and
3. a new wet well for the existing lift station should be constructed approximately 35 feet north of the existing wet well location.

It was estimated that instituting these recommendations would cost in the vicinity of \$12,000. Other options specified by the report include moving the entire existing lift station to any other location and in the alternative installing a new type of lift station in a remote location (the cheapest of which options appears to cost \$2,800). Another option is a permanently mounted generator set with an automatic transfer switch to provide power for the lift station in the event of interruption of the normal power supply (estimated to cost between \$15,000 and \$18,000). The report notes that the City of Palos Hills is adequately protected by portable stand-by units and does not suggest installation of the emergency generator set.

Advantages ascribed to the recommended changes were replacement of the deteriorating wet well, access to the well location for additional connection, the relocation of an apparent

illegal connection into the wet well, and removal of the overflow situation from the area of the residential property to an adjacent area.

The engineer for the City of Palos Hills testified that he had started working for the city in October, 1978 and had found neither internal nor external defects in the lift station system when he inspected it one week before the hearing (R.736). In addition, the city engineer testified that a telephone alarm system had been installed since he had become city engineer and that the city had purchased a portable power generator. It was the engineer's opinion that the system as it now exists is adequate; he would not recommend that it be moved.

An electrical engineer for the city testified that he had installed the alarm system. The electrical engineer's testimony was somewhat confused; however, he did state that overflow resulting from a power outage would not be recorded "... because it wouldn't be our fault" (R.800).

Upon review of the record in this case there appears to be a gross lack of communication between departments of the City of Palos Hills. It appears that everyone responsible had independent knowledge of the overflows at the lift station with the exception of one of the Health Officers. The maintenance department failed even to record the overflows because someone decided that it was not their fault. Most certainly, some agent or employee of the City of Palos Hills is responsible for investigating and resolving this situation. Whether or not an overflow should be recorded based upon a determination of fault does not constitute good faith compliance with the Act or the Board's regulations. If, as the City of Palos Hills contends, the overflows are caused by power outages, then the problem has long since graduated from one of an isolated occurrence to one of an engineering problem which demands the attention of the City of Palos Hills.

There is sufficient evidence in the record to find that overflows occurred at the subject lift station and that the City was on notice of the problem. The evidence also supports a finding that the City did not respond in a reasonable manner after it had been made aware of the problem. The Board, therefore, finds the City in violation of Rules 601(a) and (b) and 602(b) of the Rules. The City will be ordered to cease and desist from further violations of the Rules and any violations of the Act.

The Board finds that the recommendations in Complainants' Exhibit 3 make good sense. Although the City may well want to construct a new wet well for the lift station for its own purposes, the Board feels that that action is not necessary to achieve compliance with the Rules. Lift stations such as the one here, if designed, constructed, and maintained correctly, are capable of operating without causing overflows. The Board will,

therefore, order the City to install the mercury switch activated control system and the battery-operated alarm system proposed in the exhibit and to establish and execute a suitable maintenance program for the lift station, including the keeping of records.

The Board finds that this violation demands a penalty as an aid to enforcement of the Act. The City of Palos Hills will pay the sum of \$1,000 for its violations found herein.

All counts of the complaint are dismissed as to all of the individual respondents herein.

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

ORDER

1. The City of Palos Hills is found to be in violation of Rules 601(a), 601(b), and 602(b) of Chapter 3 of the Board's Water Pollution Control Rules and Regulations.

2. The City of Palos Hills shall cease and desist further violations of these rules and regulations.

3. The City of Palos Hills shall install a mercury switch activated type control system and a battery-operated alarm system on the Runnymede lift station pursuant to the recommendations in Complainants' Exhibit 3 herein.

4. The City of Palos Hills shall establish and execute a suitable maintenance program for the Runnymede lift station, including the maintenance of suitable records reasonably designed to apprise the Illinois Environmental Protection Agency of progress toward compliance.


5. The City of Palos Hills shall pay a penalty in the amount of \$1,000 for the violations found herein, payment to be made by certified check or money order within 45 days to:

Fiscal Services Department  
Illinois Environmental Protection Agency  
2200 Churchill Road  
Springfield, Illinois 62706

6. The individual Respondents herein are dismissed.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 10<sup>th</sup> day of July, 1980 by a vote of

S.O.

  
Christan L. Moffett, Clerk  
Illinois Pollution Control Board