

ILLINOIS POLLUTION CONTROL BOARD
November 26, 1975

SPRINGFIELD SANITARY DISTRICT,)	
)	
Petitioner,)	
)	
v.)	PCB 75-250
)	
ENVIRONMENTAL PROTECTION AGENCY,)	
)	
Respondent.)	

MR. JAMES BAKER AND MR. ROBERT S. COHEN, appeared on behalf of
Petitioner;
MR. ROBERT BAREWIN AND MR. JOSEPH E. SVOBODA, appeared on behalf
of Respondent.

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

Petitioner filed an appeal of a permit denial on June 23, 1975. The Illinois Environmental Protection Agency (Agency) filed an answer to the permit appeal on June 23, 1975. Petitioner filed an amended permit appeal on August 25, 1975. The Agency filed an answer to the amended permit appeal on September 10, 1975. Three hearings were held on September 12, 18 and 29, 1975. Petitioner filed a brief on October 15, 1975. The Agency filed a brief on October 24, 1975. Petitioner filed a reply brief on October 29, 1975. Mr. Cohen orally waived his client's 90-day decision period right until November 26, 1975.

Petitioner filed an application for a construction permit on October 23, 1974 for permission to construct a pumping station located at the intersection of Fayette Avenue and Jacksonville Branch, in Springfield, Illinois. The pumping station was designed to pump a portion of the flow from the West Side Interceptor sewer into the Oak Knolls combined sewer during periods of wet weather. On January, 1975 the Agency denied the permit application because it would violate the Environmental Protection Act and Rule 602(b) of the Water Pollution Regulations (Respondent Exhibit 4). Rule 602(b) states that "excess infiltration into sewers shall be eliminated, and the maximum practical flow shall be conveyed to treatment facilities. Overflows from sanitary sewers are expressly prohibited."

The Agency indicated in its permit denial letter that:

The subject project would cause wastewater to be pumped from the Jacksonville Branch sanitary sewers to the Oak Knolls combined sewers. This proposed pumping must be considered a sanitary sewer overflow for the following reasons:

1. The Oak Knolls combined sewer has a wet weather overflow to the Jacksonville Branch Creek at the intersection of Washington Street and Chatham Rd. During periods of time when the subject pumping station would be discharging, the Oak Knolls combined sewer would already be overflowing to the Jacksonville Branch Creek and therefore the subject project would cause additional wastewater from sanitary sewers to be discharged to the Jacksonville Branch Creek.
2. The pumping from the sanitary sewers to the Oak Knolls combined sewer is unnecessary in dry weather and therefore the wet weather pumping must be considered a sanitary sewer overflow (Respondent Exhibit 4).

Petitioner argues that the sewers immediately upstream of the proposed pumping station are by definition of the Pollution Control Board combined rather than sanitary sewers, and that consequently the proposed pumping station would not constitute a sanitary overflow (Petitioner's Brief, p. 4). Petitioner agrees that if the sewers upstream from the pumping station are in fact sanitary sewers, then the proposed pumping station would violate Rule 602(b) as a sanitary sewer overflow (Petitioner's Reply Brief, p. 4). Therefore, the major issue on appeal is the correct characterization of the sewers upstream from the proposed pumping station.

Petitioner would have the Board review the Agency's determination in light of the actual conditions present in the sewer in question. To compare the undisputed characteristics of the sewer upstream of the location of the proposed pumping station with plain language of Rule 104 which defines both sanitary and combined sewers defeats the purpose of the Water Pollution Regulations and the Act (Respondent's Reply Brief, p.9). The Agency argues that "the primary determining factor is what the sewers were designed and intended to be, either sanitary or combined" (Agency Brief, p. 3).

Rule 104 of the Water Pollution Regulations has the following definitions:

"Sanitary Sewer" means a sewer that carries wastewater together with incidental land runoff;

"Combined Sewer" means a sewer receiving both wastewater and land runoff;

The West Side Interceptor, the sewer in question, transports a large quantity of water during periods of precipitation. This is supported by evidence in the record that the dry weather flows are approximately one-tenth of the wet weather flows. Problems resulting from the wet weather flow carried by the West Side Interceptor in the Outer Park Drive area of Springfield, led to an Agency determination to not issue further permits to construct and use sewers tributary to the west side interceptor in the south western area of Springfield. These problems consisted of basement backups, sewer overflows from manhole covers, basement cracking, etc. and have been discussed in previous Board Opinions decided by both Petitioner and Agency. They need not be discussed at length in this Opinion.

This record clearly demonstrates that prior to the filing of the amended permit appeal, both Petitioner and the Agency characterized the West Side Interceptor as a sanitary sewer. A report submitted by Petitioner to Respondent entitled, "Infiltration/Inflow Analysis", prepared by the consulting engineering firm of Crawford, Murphy and Tilly, contains numerous references which characterizes the sewer in question as being a sanitary sewer (Agency Exhibit 2, p. 3, 4, 5, 6, 7, 8, 10, 11, 13, and 19). In a letter from Mr. A. Paul Troemper, Executive Director of the Springfield Sanitary District to Mr. William H. Busch, Manager, Permit Section, Division of Water Pollution Control, Illinois Environmental Protection Agency, indicates that the intercepting chamber, located at Washington Street has a combined and a sanitary sewer emptying into it (Exhibit 1 attached to Respondent Exhibit 1). An examination of Respondent's Exhibit #1 shows that the two sewers emptying into the intercepting chamber are the West Side Interceptor and the Oak Knolls combined sewer. If that portion of the West Side Interceptor downstream from the proposed pumping station is a sanitary sewer, then every portion upstream must also be considered a sanitary sewer. All of the Agency engineers, called as adverse witnesses by Petitioner, said they apparently have always considered the West Side Interceptor as a sanitary sewer (R. 137, 138, 203, 207, 213, and 305).

Petitioner established that the employees of the District, the Agency engineers, and the consulting engineer hired by the District, relied on a definition similar to that found in Petitioner's Exhibit 2. A sanitary sewer is defined in this document as,

A sewer that carries liquid and water - carried wastes from residents, commercial buildings, industrial plants and institutions, together with minor quantities of ground-storm, surface waters that are not admitted intentionally (Petitioner Exhibit 2, p. 279).

A combined sewer is defined to be

A sewer intended to receive both wastewater and storm or surface water (Respondent Exhibit 2, p. 63).

We find the definition of a sanitary sewer and a combined sewer utilized by Agency personnel, representatives of Petitioner, and Petitioner's consulting engineer, as defined in Petitioner's Exhibit #2 and described in numerous places in the record, to be consistent with the definitions as found in Rule 104 of the Water Pollution Regulations. We must agree with the Agency that to find otherwise would allow any sanitary district to circumvent the prohibitions of sanitary sewer overflows by the district's own negligence and failure to properly maintain its sewer system. If we were to accept Petitioner's argument that the actual condition of the sewer at any given time is controlling, then a sanitary district could change its sanitary sewers into combined sewers by allowing excessive infiltration to enter its sewers and thereby changing the sewers into combined sewers. To prevent pollution one must be able to look at the design intent of the sewer; if they are determined to be sanitary then excessive infiltrations causing any overflow would be prohibited by Rule 602(b) as such an overflow would constitute a sanitary sewer overflow.

We find based on a reading of the transcript, all of the exhibits, including excerpts of previous testimony, and the briefs supplied by both parties, that Petitioner's West Side Interceptor is a sanitary sewer which has an excessive infiltration problem. The district has since 1926 had an ordinance which prohibits the connection of footing tiles to the sewer in question. Petitioner has attempted to have the City of Leland Grove remove several street inlets that discharge stormwater into the West Side Interceptor (R. 20 & 21). Mr. Gerald Peters, district engineer for the Springfield Sanitary District, provided extensive testimony for the reasons for excessive infiltration into the sanitary sewers, and what the district has done to remedy the situation (See R. 78-82, 85-89). The fact that the District has been unable to remove all of the illegal storm connections, repair the faulty joints, or complete other procedures that it has undertaken, does not convert what were designed and intended to be sanitary sewers into combined sewers.

We find that the Agency correctly denied the permit application because the proposed pumping station would constitute a sanitary sewer bypass in violation of Rule 602(b) of the Water Pollution Regulations as the pumping station would pump waste from a sanitary sewer into a combined sewer which would be already overflowing. Section 39(a) of the Illinois Environmental Protection Act prohibits the Agency from granting a permit if the facility or equipment would cause a violation of the Act or Regulations adopted pursuant to the Act.

Petitioner tried to establish that the Agency did not treat the Petitioner as it would any other permit applicant. We find that Petitioner has presented no evidence that the Agency has so treated Petitioner. What the record establishes is that a period of discussion between various individuals at the Agency took place regarding whether or not the permit in question should be granted. The permit section recommended that permit be granted because the pumping station for which the permit was sought was correctly sized, etc. (R.). Members of the legal support section raised the legal objection that the pumping station would constitute a sanitary sewer bypass in violation of Rule 602(b). These conflicting positions were taken to the assistant director, (R.). This was a procedure that had been done in the past (R.). The assistant director decided to discuss the matter with Dr. Richard H. Briceland, the director of the Agency who determined that the permit would not be granted. To single out mere differences of opinion among Agency staff is not an indication that Petitioner was somehow treated unfairly.

A third issue raised by Petitioner is that the permit would allow the construction of a facility which would abate a serious environmental problem in the Outer Park Drive area. We have previously recognized that the pumping station might not provide the projected results (See First National Bank of Springfield Trustee of Trust #3010 v. EPA, PCB 74-298 at pages 8 and 9 (December 19, 1974)). The issue of the environmental acceptability of the project is not a correct issue to raise in a permit appeal. Dr. Briceland in a letter to Mr. Paul Troemper, dated January 8, 1975, indicated that while the Agency could not issue the permit it was not totally in disfavor of the project and that the proper procedure for obtaining a permit for the pumping station would be to seek a variance from the Board (Petitioner's Exhibit 14). In any variance case the Board would be free to weigh the hardship to Petitioner and the resulting environmental benefits and detriments associated with the project.

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


ORDER

We find that the Environmental Protection Agency correctly denied the application for a construction permit submitted by the Springfield Sanitary District. Therefore, this permit appeal is dismissed.

IT IS SO ORDERED.

Mr. Young took no part in the deliberation of this case and abstained.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 26th day of November, 1975 by a vote of 3-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board