ILLINOIS POLLUTION CONTROL BOARD
February 25, 1988

BILL ADEN, JOHN SCHRODER, VELMA SCHRODER, JOE KENDALL, LAMORN MORRIS, et al.,	)	
Complainants,	)	
v.	)	PCB 86-193
CITY OF FREEPORT,	)	
Respondent.	)	

JAMES L. GITZ AND SIDNEY MARGOLIS APPEARED ON BEHALF OF COMPLAINANTS OTHER THAN BILL ADEN AND JOE KENDALL, WHO APPEARED PRO SE.

JOHN GARRITY APPEARED ON BEHALF OF THE RESPONDENT.

OPINION AND INTERIM ORDER OF THE BOARD (by J. Marlin):

This matter comes before the Board on a November 5, 1986 Complaint filed by Bill Aden, John Schroder, Lamorn Morris, et al. (Complainants) against the City of Freeport (Freeport). The Complainants allege that Freeport is in violation of 35 Ill. Adm. Code 306.102, Systems Reliability, 306.303, Excess Infiltration, and 306.304, Overflows, due to the poor operation of its sanitary sewer system. A hearing was held in this matter on June 23, 1987 in Freeport; members of the public were in attendance. Post hearing briefs for Freeport and the Complainants were filed on August 17 and 18, 1987, respectively.

At hearing, the Complainants appeared pro se. Subsequent to the hearing, Complainants other than Bill Aden and Joe Kendall procured the services of an attorney. Counsel filed a post-hearing brief for those particular complaints. Aden and Kendall filed no post-hearing brief of their own. For the purposes of clarity, the Board will make no distinction between Aden and Kendall and the rest of the Complainants and will refer to all as Complainants.

At hearing, twenty persons testified on behalf of the Complainants. Also, much material, including many photographs, were entered as Complainant's exhibits. It is clear from the testimony that there are severe problems with the functioning of Freeport's sanitary sewer system. Numerous eyewitness accounts of sanitary sewer overflows, basements and streets flooding with sewage, and resulting property damage were told at hearing. It is also apparent that such sanitary sewer flooding is not confined to a discrete portion of Freeport. In order to aid in explaining the extent of the problem, the Board will review some of the testimony presented at hearing.

Bill Aden testified that he started to get sanitary sewer flooding in his basement about six or seven years ago. (R. 8). He claims that Freeport has been unresponsive to his complaints. He insists that the basement back up is not storm water but sanitary sewer water:

> And when we get the t---s floating around on the floor that comes out of the sewer, now, if that ain't sanitary, I know I didn't get over in the corner and do it.
>
> (R. 11).

Aden lives in the "south middle" part of Freeport. Id.

Nickee Bender testified that her problems with sanitary sewer flooding date back to 1965. At that time a back-up damaged $3,000 worth of equipment in the beauty salon which she ran out of her basement. "It came up the drain, the stools, it was really a mess." (R. 15). She claimed that the problems have continued and that the sanitary sewer backs up about two times per year. Bender stated that storm water infiltration into the sanitary sewer system causes the back ups. (R. 22). Also, she asserted that whenever the sewers near the intersection of Hunt and Elm Streets back up, Freeport deliberately pumps raw sewage onto the street to help alleviate the problem. She stated that such a practice had been occuring since 1970. (R. 23). Bender lives in the northwest part of Freeport. (R. 21).

James Oswalt testified that he had twice experienced sanitary sewer back-ups in the seven or eight years he lived on the southeast side of Freeport. He said that the water "comes out in the drain and right out of my stool in the basement." The flood ruined the carpeting in his finished basement. (R. 25-26).

Joe Kendall testified that he first experienced a problem in 1982. At that time, he didn't know what caused the flooding. The most recent incident occurred in July 1986:

> I woke up one morning, went down to my freezer to get something down in the basement...when I did, I stepped into sewage up to my ankles....
>
> (R. 28).

A neighbor had a similar problem at the time. When plumbers could not remedy the problem, they "checked in the middle of Cherry and Clark Street, and it was the sewer that was backing up...." According to Kendall, "they [presumably the City] had someone there 24 hours a day for a week...pumping the sewage out....Otherwise, I guess we would have gotten it back into our

basements." (R. 29). Kendall also testified that a sinkhole formed in the street just after the pumping began. (R. 31).

Lorraine Kendall also testified that the Kendall's had had "numerous back-ups" in their basement. She stated that on September 24, 1986, she experienced knee-deep water in the basement. She stated, "We had put a tennis ball in the drain, but it popped out." (R. 31). Kendall claims that all of their neighbors experience sewage back-ups. (R. 32). The Kendalls live near the center of Freeport. (R. 33).

Walter Meinder stated that he has been "fighting water" for the eight or nine years he has lived in his home. He testified that just a few days previous to the hearing he experienced a backup which flooded the basement up to the "fourth step". He claimed that his renter, who lived downstairs, moved out because of the smell. According to Meinder:

> It [the flood] has been up to the first floor of the house, that is probably five to six feet from the basement floor up, and I have a body shop and it has ruined several cars, all my equipment, it has cost me a big bundle every time it happens.
>
> (R. 39).

Sharon Brie, a neighbor of Aden, stated that four times in the last five years she experienced 6 ½ feet of "water" in her basement. Brie later spoke of 6 ½ feet of sewage water. She claims that the northwest wall of the basement has collapsed a bit and that the foundation and kitchen walls are cracked. In addition, she stated that much of her family's personal property has been ruined. She estimated a loss of $2,500 for each incident. (R. 40-41).

Russell Petra lives in the Crestwood area which is in the northwest portion of Freeport. (R. 47). Petra expressed his frustration with Freeport officials:

> They keep trying to tell us it is stormwater. Well, there are thirteen homes out there that keep getting flooded everytime we get a small rain or anything, and it is human s--- floating around the floors.
>
> (R. 45).

Joyce Veer, another Freeport resident, living in the northwest part of the city, testified as follows:

> We have had this problem [sanitary sewer flooding of the basement] ever since they put

> the sewer in out there. It is not every year. Sometimes you will miss a couple of years, then again you will get it two or three times in one year.
>
> We have lost some stuff, but we have learned after the first couple of times don't put anything down in the basement that you don't want to lose.
>
> If I can find a way to get the furnace and water heater out of there, I would.
>
> A lot of our problem is right with the pumping station itself because sometimes we don't have to have a lot of rain and the water still backs up in the basement.
>
> (R. 52-53).

Nicki Martin, a former Freeport alderman, recounted incidences of flooding in her ward.

> I would just like to state that last year I was called on three different occasions to come view the situation following various amounts of rainfall.
>
> I believe the first time I was called there was about an inch of rainfall, but it fell in a very short period of time.
>
> What I observed was, in three different basements in June, I observed -- June of '86, sewer backup in the basements.
>
> When the rain hit in September, I was called down there and couldn't even get into the area because the water was over my waist, and I had to go back out and come in the other way. At that time I observed eight homes where the water was up to the first floor, and it was filled with sewer water.
>
> I observed -- I stayed and waited until the water receded, so that the city began pumping the sanitary sewer about one o'clock in the morning, and then I believe I stopped after work at 5:30 the following day and it was about fifteen hours later and they were still pumping out the sanitary sewer.

> I was also concerned because on another occasion, Mr. Aden did call me to come down late in the afternoon. We took the manhole cover off of one of the sanitary sewers. It was running at full capacity at four o'clock in the afternoon on a very sunny day.
>
> It just seemed to me at that point that there was something drastically wrong in that particular area that needed to be corrected.
>
> (R. 56-68).

Pat Bores, also a neighbor of Aden, testified that in September 1986, her basement was flooded with 4 ½ feet of sewage. According to Bores testimony, her family lost "about $2000 worth of furniture, appliances, personal items, Christmas ornaments." (R. 72).

Another Northwest-side resident, Paula Schwartz stated:

> Every time we have a bad rain, and our home is approximately fourteen years old, we get sewage, they pump sewage out in the street down into the gutter because the lift station can't handle it.
>
> (R. 73).

Lloyd Eller lives across the street from Schwartz. He testified:

> [E]very time we get a serious rain we get a flooding problem as well as sewer backup, and countless times at the pump station, which is just a hundred yards from my back door, they are over there and they are pumping it out. They are pumping it out onto the lawn and there are kids that play in it around that area, also.

Eller stated that he believed that the problem was a storm water as well as sewer water problem. He further asserted: (R. 75)

> They [presumably Freeport] put in a real fancy holding pond for the storm sewer to keep the problem away. And right where I am there is a river of water that comes down through there. I am talking a river. It is wider than the Pecatonica!
>
> (R. 77).

Eller also described the property damage he has incurred:

> When I lost my basement due to the flooding and the sewer backup, I lost my entire plumbing in the house, the entire electric in the house, my boiler in the house, my water heater, everything that was in the basement. The stairs had to be tore [sic] out.
>
> (R. 75-76).

Lee Robinson is an alderman for the ward which covers the west end of Freeport. He stated at hearing.

> As I visited with my constituents in the Second Ward, either through telephone calls or through personal conversations, I found that sewer complaints are the number one concern of the citizens in this immediate area.
>
> * * *
>
> I have also visited the homes of citizens in my area who have been plagued by sewer problems, and I have personally witnessed the flooding of the basements.
>
> Frankly, there was no question in my mind that this was caused by sanitary sewer backup, simply due to the nature of the substances found in the water.
>
> (R. 80-81).

Margie Heilman stated that in the eleven years at her residence, she has experienced sewage water back-ups in her basement at least five times. According to Heilman, these back-ups caused much damage. (R. 83).

Apparently, Freeport does not challenge the validity of the stories of the Complainants' witnesses. Rather, Freeport attempts to characterize the sanitary sewer floods as relatively infrequent occurrences:

> The witnesses for the complainants testified that from time to time in the past several years they had experienced sanitary sewer backup in their homes. The evidence indicated that the backups of the sanitary sewer occurred during periods of heavy rainfall. Surface water flooding resulted in sanitary sewer backups.

(Freeport Brief, p. 3).

Freeport also asserts that its records show receiving only "few" complaints regarding sanitary sewer backups during the years 1985 through 1987. (Id.; See also City Exh. #3).

Kim Rees, executive director of the Water and Sewer Commission for Freeport, testified on behalf of Freeport. He stated that Freeport has approximately 102 miles of sanitary sewers. (R. 135). He admitted that Freeport, at times, pumps sanitary sewer water into the storm sewers in an effort to keep the sanitary sewers from backing up into people's basements. (R. 139). However, Rees claims that the sewage during periods of rain is 99 percent water (R. 13). Rees also testified that Freeport had an infiltration and inflow problem which the city is trying to address through the work of its engineering consultants, Missman, Stanley & Associates. (R. 140). He stated that when the Pecatonica River is high, it infiltrates into the sanitary sewers (R. 144). Rees also spoke of problems concerning the Lynn Street lift station which impacts upon the Hunt street area. Rees stated that a Missman, Stanley & Associates' report that the Lynn street lift station "cannot handle the extra flows during rains." (R. 138).

Freeport presented as City Exhibits #19 and #25 two reports authored by Missman, Stanley & Associates. The first is dated February 1987 and is entitled Interim Preliminary Finding. (City Exh. #19). The second is dated March 1987 and is entitled Preliminary Findings. (City Exh. #25). The March report is a final version of the February report (R. 156).

The March report covers the whole sanitary sewer system tributory to Freeport's treatment works. However, special attention was given to the Hunt Avenue and Homer Street areas. (City Exh. #25, p. 1).

The Missman Report concludes:

1. The sanitary sewer system is subject to excessive inflow and infiltration (river water intrusion).

2. Surcharging is common to many portions of the sewers. The hydraulic capacity of the sewer system is exceeded during significant rainfall events and, at times, causes surcharging of the sewers with sewage back-up.

3. The basement flooding and sewer back-up problems are compounded upon occasion when the capacity of the surface drainage system is exceeded.

4. A combination of improvements to the surface drainage system and to the sanitary sewer system including

> sanitary sewer rehabilitation may have to be accomplished before basement flooding or sewer back up can be relieved.
>
> (City Exh. #25, p. 40).

Evidence presented by the Complainants, as well as Freeport, indicates that there exists a long-time problem with the functioning of the sanitary sewers throughout much of the city. Freeport points to the various projects it has undertaken since 1979 to correct problems with its sewers. (City Exh. #6-9).

However, Freeport evidently recognizes the need for further improvements on the sewer system, since it is willing to move forward with further work on the sanitary sewers provided funds are available. (R. 109).

Section 31(c) of the Illinois Environmental Protection Act (Act) provides that the burden of proof of violation is on the complainant. Once the complainant makes this proof, "the burden shall be on the respondent to show that compliance with the Board's regulations would impose an arbitrary or unreasonable hardship." Freeport has not made such a claim, and it has not presented evidence to the Board that would prove such claim.

The Board notes that Freeport points out that one of the Complainants' residences, that of Lamorn Morris, is not hooked up to the Freeport sanitary sewer system. Section 31 of the Act provides that "[a]ny person" may file a complaint before the Board. That person does not necessarily have to be a victim of a violation. Also, Morris' testimony concerned other people's back-ups, not his own. Nonetheless, there is much testimony, outside of that of Lamorn Morris, which indicates serious problems with Freeport's sanitary sewers.

In 1986, an allegation of sanitary sewer overflows prompted the Illinois Environmental Protection Agency (Agency) to send to Freeport a letter, pursuant to Section 31(d) of the Act, informing Freeport that the Agency intended to file an enforcement action. (City Exhibit, #13). The Agency never filed an enforcement action.

In February 1987, Freeport submitted to the Agency the interim study which had earlier been requested by the Agency during negotiations with Freeport. (City Exhibit #19). The February study included a recommendation that Freeport conduct a Sewer System Evaluation Study (SSES). After reviewing the February study, the Agency asserted in a letter to Freeport that the "recommended implementation schedule appears to be appropriate for the pursuit of the cost effective alternative." Specifically, the Agency stated "SSES work appears to be appropriately scheduled in this report to provide necessary information to adequately design relief work to match inflow removal work." (City Exhibit #20).

In that same letter, the Agency stated:

> The method of financing the proposed work should be submitted as part of this report. We would like to see a verification that the City fully intends to finance and complete the project.

Freeport, through its Water and Sewer Commission, responded in a letter dated May 29, 1987:

> [T]he Water and Sewer Commission has decided to proceed with the Sewer System Evaluation Survey after we are given the green light by our State Representative Mulcahey and all of the [Build Illinois] grant funds that will be available for this project get the needed legislative approval.
>
> (City Exhibit #21)

Kim Rees also reiterated that position at hearing. (R. 108).

By its Order of September 4, 1987, the Board granted Complainants' motion to enter into the record a letter, dated August 11, 1987, from State Representative Richard T. Mulcahey to the Board. This letter further explains the situation concerning Build Illinois funds as well as overall sewage problem. (Complainants' Exh. A). The letter states:

> The City's witnesses at that hearing were Kim Rees, Director of the Water & Sewer Commission for Freeport, and Robert Dunning, an engineer with Missman, Stanley & Associates of Rockford, Illinois who conducted a city sewer study. Both of these gentlmen testified to the city's plans for possible sewer improvement to benefit long suffering Freeport residents who have experienced continuing sewer backup problems. Both gentlemen also alleged that these improvements would be paid for by state grants and/or appropriated state funds.
>
> This is our hope and objective; however, at this moment this is not a reality. I have been actively working with state agencies in pursuing grant monies. Likewise, I introduced legislation to appropriate funds to the City for the needed sewer improvements. However, that bill was held in committee. As you can appreciate, these are tough times financially for the State of Illinois.

> In weighing the evidence against the City, I hope and trust that the search for state grant monies and state help will not be utilized as an excuse or a defense to avoid responsibility for immediate remedial measures should violations of the rules and regulations be found.
>
> * * *
>
> I have been a member of the Illinois General Assembly for over thirteen years and have developed an understanding of the basic needs of my constituency. The severity of these antiquated and unhealthy conditions is unprecedented.
>
> The residential problems that exist on Homer, Hunt, and Shawnee Streets as well as on the east side of Freeport have reached an epidemic stage and should have been addressed long ago.
>
> The health and welfare of the residents continues to be ignored. Subjecting these people to primitive sewer conditions through years of neglect must be addressed by the municipality which created the problem.
>
> (Complainants' Exh. p. 1-2)

The Board gave Freeport an opportunity for cross-examination concerning the letter's contents by directing the Hearing Officer to schedule a second hearing. (Order, September 4, 1987). However, Freeport subsequently informed the Board that it waived its right to the cross-examination of Representative Mulcahey with regard to the information contained in the letter. Freeport also requested that a second hearing not be scheduled. As a result, the Board found a second hearing to be unnecessary. (Order, October 1, 1987). Finally, the Board notes that Section 32 of the Act states that in an enforcement case "any person may submit written statements to the Board in connection with the subject thereof." Ill. Rev. Stat. 1985, ch. 111 ½, par. 1032. Representative Mulcahey's letter is one such statement.

In reviewing the record of an enforcement proceeding, the Board must consider the factors set forth by Section 33(c) of the Act. The burden of proof is on the respondent to supply the Board with information in order to enable the Board to make such a consideration. Processing and Books, Inc. v. Pollution Control Board, 64 Ill. 2d 68, 76-77, 351 N.E.2d 865 (1976); Castellari v. Prior, PCB 86-79 (May 29, 1987).

Sanitary sewer back-ups and floods have greatly interfered with the lives of many of Freeport's residents. Much private property has been damaged over the years by the back-ups. On a periodic, but regular, basis the back-ups have rendered basements, yards, and streets completely unsanitary. Such conditions certainly threaten the public's health and general welfare.

The pollution source in this instance, is the sanitary sewer system. When functioning properly, sanitary sewers have great economic and social value. However, when a sewer system malfunctions in a manner such as Freeport's, such value is lost to those who experience the malfunctioning first hand.

With regard to the suitability of the location of the pollution source, it is imperative that sanitary sewers function properly due to their inherent close proximity to the residential environment.

Finally, the Board must consider the "technical practicability and economic reasonableness" of eliminating the pollution problem. There is no evidence to suggest that the solution to Freeport's sewer problem is technically not practicable. Similarly, there is no basis for the Board to conclude that the cost of this solution is "unreasonable." Although a $20 million estimate was mentioned at hearing, Dunning, a Missman engineer, stated that it was premature to estimate a cost for rehabilitation work for the whole city. (R. 158). Dunning, though, did testify that Rock Island, a city of similar size and with similar problems, incurred a $2 million expense for a complete rehabilitation.[1] (R. 159-160). According to the Missman Report, a total cost for studies and rehabilitation (including transportation and treatment costs) of the Hunt Avenue, Homer Street and Downtown Districts amounts to approximately $1 million. (City Exh. #25, p. 39).

In conclusion, the Board finds that Freeport has violated Sections 306.102(a), 306.303 and 306.304.

Section 306.102(a), Systems Reliability, provides in part that "All treatment works and associated facilities shall be so constructed and operated as to minimize violations of applicable standards during such contingencies as flooding, adverse weather...." The record is clear that sanitary sewer back-ups and overflows occur in Freeport during rainy conditions.

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[1] The Board notes that the Illinois highway map indicates that Rock Island's population is considerably largers, almost by a factor of two, than Freeport's population.

Section 306.303, Excess Infiltration, states:

> Excess infiltration into sewers shall be eliminated, and the maximum practicable flow shall be conveyed to treatment facilities.

Finally, Section 306.304, Overflows, states, "Overflows from sanitary sewers are expressly prohibited." The record is filled with accounts of sanitary sewer overflows. The record demonstrates that much of the infiltration now occurring in Freeport's sanitary sewers can be eliminated and overflows prevented.

Unfortunately, the record is not detailed as to the specific types of improvements that are necessary to rectify the overflow problems throughout Freeport. The Missman Report recommended that a Sewer System Evaluation Survey be conducted for the city. Knowledge of needed improvements might not be gained until after the results of the SSES are known. Nonetheless, the Missman Report outlines a plan which would complete city-wide rehabilitation by October 31, 1990. (City Exh. #25, p. 41).

The problems with the system are complex and influenced by sanitary and storm sewer flows, surface water runoff and river stages. Some problems may be beyond Freeport's control due to the location of residences in relation to the floodplain. The Board realizes that all of the problems in the system cannot be addressed at once given the current information base. However, it is apparent that substantial progress could be made in the short term. A number of cost effective actions that could be undertaken without much study include disconnecting downspouts from sanitary or combined sewers and doing some work on manholes. Freeport can implement programs to require retention of storm water at related businesses to reduce the peak flows of surface water.

Freeport and the Agency have been discussing solutions to the problems. The Board will at this time largely defer to Freeport and the Agency regarding the details addressing the sewer problems. Freeport is expected to immediately take steps that will lead to compliance. Emphasis should go to the most serious problems which appear to be in the Homer and Hunt areas.

Freeport is required by today's Interim Order to proceed without regard to the availability of State or Federal Funds. Health and environmental threats demonstrated by the record in this case demand such action. The record indicates that the City has failed to adequately address its sewer problems for many years while encouraging developments that add to both surface and sewer flows. In essence, Freeport has long deferred expenditures on the sewer system. Freeport should be aware of Section 46 of the Act regarding financing such work.

Failure to make progress in addressing the problems could lead to penalties against Freeport and the possible imposition of restricted status to prevent additional residential or commercial hookups to the sewer system.

The Board will retain jurisdiction in this matter and order that Freeport submit its plan for compliance with Board regulations. The plan shall outline anticipated steps, with associated dates for completion, which will lead to the rehabilitation of Freeport's sewer system. The Board will require that Freeport achieve substantial compliance by October 31, 1990. The Board will order Freeport to provide its compliance plan to the Agency, the Board and Complainants by May 2, 1988. Given that the preliminary Missman Report has been available since March of 1987, this requirement is viewed as reasonable. Freeport at this juncture has considerable freedom to choose a mixture of options to come into compliance. For example, the cost effectiveness of disconnecting certain illegal hookups can be balanced against using funds to work on the main sewer lines. The Complainants and Agency may comment upon the plan after it is filed wih the Board. This action today is consistent with previous sanitary sewer enforcement cases brought by citizen complainants. See Cupp v. South Palos Township Sanitary District, PCB 83-104, 58 PCB 223 (May 29, 1984), Daun v. Village of Roselle, PCB 80-17, 40 PCB 45 (December 4, 1980).

INTERIM ORDER

It is the Order of the Pollution Control Board (Board) that:

1. The City of Freeport (Freeport) has violated 35 Ill. Adm. Code 306.102(a), 306.303, 306.304.

2. By May 2, 1988, Freeport shall submit to the Board, the Illinois Environmental Protection Agency (Agency), and Complainants a plan for compliance with 35 Ill. Adm. Code 306.102, 306.303, and 306.304. At a minimum, this plan shall include a schedule detailing steps, with corresponding dates, that must be taken in order to achieve compliance. Compliance shall be achieved no later than October 31, 1990.

3. Within 30 days after the filing of Freeport's compliance plan, the Agency and Complainants may file comments concerning the plan.

4. The Board will retain jurisdiction in this matter.

IT IS SO ORDERED.

J.T. Meyer concurred.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Interim Order was adopted on the 25th day of February, 1988, by a vote of 7-0.

Dorothy M. Gunn

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board