ILLINOIS POLLUTION CONTROL BOARD
January 27, 1971

SPRINGFIELD SANITARY DISTRICT	)	
	)	
	)	
v.	)	#PCB 70-32
	)	
	)	
ENVIRONMENTAL PROTECTION AGENCY	)	

Opinion of the Board (by Mr. Currie):

The Springfield Sanitary District petitions for permission to discharge ten million gallons of raw sewage daily to Spring Creek for 30 working days while repairing an interceptor sewer. The Environmental Protection Agency and innumerable affected citizens vigorously object, and the Agency in a counterclaim asks us to order that the sewer be corrected forthwith without discharging raw sewage. We agree with the Agency.

Normally the Sanitary District gives its sewage secondary treatment, and in accordance with Rules and Regulations SWB-14 is building additional improved facilities (R. 67). Twice already, however, an old interceptor sewer has ruptured, causing the discharge of raw sewage into Spring Creek (R. 21).

The results of sewage discharges to Spring Creek, as expected, have been unsavory. During a July rupture dissolved oxygen levels went down below one mg/l (R. 63); sludge deposits have been found on the stream bottom (R. 297); fish have been killed in the Sangamon River downstream from its confluence with Spring Creek (R. 330-32); the water in the creek has been black and smelly (R. 332-33); bottom organisms in the River itself are far more indicative of pollution below the confluence of Spring Creek than above (R. 285-90). There is no suggestion that these conditions are attributable to sources other than the Springfield Sanitary District. The District testified that "there is a very definite danger" that another rupture may occur at any time (R. 55).

It is perfectly plain that the existence of a sewer likely to break and discharge raw sewage to a small stream constitutes a serious water pollution hazard. The possible adverse effects of such a break are indeed the reason for the Sanitary District's variance request. This case fits squarely into the statutory

provision that "no person shall. . .threaten. . . the discharge of any contaminants. . . so as to cause. . . water pollution in Illinois. . .or so as to violate regulations or standards" (Environmental Protection Act, § 12(a)). The word "threat" does not imply a deliberate or belligerent act or an open statement of intention; it refers in this context to the existence of a hazard, and is intended to permit the Board to act before the pollution actually takes place. Without such authority the Board could only lock the stable after the horses have been spirited away.

It is plain from the above summary of the evidence that another rupture could very well "create a nuisance," or be "detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate uses, or to. . .fish, or other aquatic life," § 3(n), and therefore cause water pollution as defined in the statute itself. Moreover, a rupture could release to the stream "substances. . .that will settle to form putrescent or otherwise objectionable sludge deposits; or which will form bottom deposits that may be detrimental to bottom biota" and "materials . . . producing color, odor or other conditions in such degree as to create a nuisance," all in violation of Rule 1.03(a) and (c) of SWB-14, which remains in effect by virtue of section 49 of the Act, and could reduce dissolved oxygen in the creek below the levels of 5.0 mg/l for 16 hours per day and 4.0 at any time, as prescribed by Rule 1.05 (a) of the same regulations. The latter Rule specifies that the Sanitary Water Board "may declare specific streams or head water sections of streams to be unsuitable for sustaining fish and aquatic life;" no such declaration has been made for Spring Creek, and consequently the dissolved oxygen standard is applicable.

The Sanitary District suggests that compliance with SWB-14 is not required until July 1972 (R.87), but we disagree. That is the date set by the implementation plan (Rule 1.08, paragraph 14) for "construction of municipal treatment works improvements to adequately meet these water quality standards." It is the equivalent of a variance given to those who must build new plants in order to treat their discharges. It does not exempt those who have such facilities from compliance with the standards until 1972. And the Sanitary District's present problem is not one falling within the delayed compliance provision of Rule 1.08's paragraph 14. Finally, there is no merit to the District's apparent suggestion that, because SWB-14 does not prescribe a biological standard in terms of bottom organisms, tests showing the presence of pollution-tolerant organisms are irrelevant (R.306). Such tests are clearly relevant to the question of adverse effects upon aquatic life, which indicate pollution under the statute itself. The prescription of specific regulations governing a stream does not and cannot repeal the statutory prohibition against causing water pollution, which applies whether or not the regulations themselves are also violated.

We therefore find that the Springfield Sanitary District has threatened to discharge contaminants so as to cause water pollution and so as to violate SWB-14, all in violation of section 12(a) of the Environmental Protection Act.

The District proposes to correct this violation by committing another, that is, by bypassing raw sewage directly to the creek while repairing the sewer. To do so would violate section 12(a) for the reasons given above. We find it wholly unpersuasive that the proposed bypass is scheduled for the winter. It is true that biochemical oxygen demand is exerted more slowly at low temperatures, so that the immediate effect on dissolved oxygen values would be less dramatic (R.25). But the record is clear that raw sewage is likely to form objectionable sludge deposits on the stream bottom, which exert a continuing oxygen-depleting effect (R.162-66) and which smother desirable bottom-dwelling organisms (R.296).

It is also clear that the discharge is likely to be very smelly and very unsightly (R.229); that children often play near the ditch that would be used for bypassing (R.226); and that raw sewage contains enormous numbers of bacteria (R.165), some of which are likely to be dangerous. Without receiving additional testimony to the same effect, it is abundantly obvious that the proposed bypass would cause water pollution and violate both the statute and SWB-14, Rule 1.03.

The District claims that it will suffer hardship if it cannot bypass the sewage because to pump the sewage around the repair zone and transport it to the plant for treatment would cost an estimated $75,000 as compared with $67,000 for the repair work itself, and that the extra money is simply not available in its budget (R.23). It is clear that pumping the sewage around the repair zone is feasible; EPA testified, without contradiction, that Decatur had done just that when confronted with a similar problem not long before (R.346). EPA also challenged the $75,000 estimate, which was obtained without competitive bidding (101-02), and offered evidence that pipes used in the pumping operation could be sold for other uses afterwards in order to reduce costs (R.348-49).

We think $75,000, if that much be required, is well worth spending in order to avoid desecrating Spring Creek once again with raw sewage. The cost of avoiding pollution during repairs is a part of the cost of sewage collection and treatment, and it should be borne by the citizens of the Sanitary District. There is no proof that to spend this money would inflict an arbitrary or unreasonable hardship. The District testified that it had authority to issue bonds, if ordered to by this Board, in order to finance the pumping facilities to avoid pollution, and that it had by no means reached the limits of its bonding authority (R.317.) We

shall order the District to issue the bonds if they are needed. Section 46 of the Act makes a referendum unnecessary in such cases. The District says it will comply with such an order (R.26,362).

The request for a variance is denied; the District is ordered to repair the offending sewer posthaste without bypassing sewage to the waters of the State, and to issue bonds if necessary to finance the job. This opinion constitutes the Board's findings of fact and conclusions of law.

ORDER

The Pollution Control Board having considered the record in this case, it is hereby ordered as follows:

1. The petition of the Springfield Sanitary District for a variance to permit bypassing of sewage to Spring Creek during sewer repair is denied.

2. The Springfield Sanitary District shall within thirty days from the date of this order submit to the Environmental Protection Agency firm plans for repairing the interceptor sewer in question as expeditiously as is practicable, and without bypassing sewage to the waters of Illinois.

3. Upon approval of these plans the District shall carry out such repair as expeditiously as is practicable, and in no event shall the completion of the project be delayed beyond May 1, 1971.

4. The Springfield Sanitary District shall issue, without referendum, such revenue or general obligation bonds as may be necessary to finance the above improvements, including the cost of facilities to avoid bypassing sewage to the waters of Illinois.

5. The Springfield Sanitary District shall not discharge sewage to the waters of Illinois as a result of repairs to the interceptor sewer in issue.

I, Regina E. Ryan, Clerk of the Pollution Control Board, hereby certify that the Board adopted the above opinion and order this 27th day of January, 1971.

Regina E. Ryan
Clerk of the Board