

ILLINOIS POLLUTION CONTROL BOARD  
February 17, 1972

RICHARD P. GLOVKA )  
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 v. )  
 )  
 NORTH SHORE SANITARY DISTRICT, ) #71-269  
 RAYMOND E. ANDERSON, THOMAS P. )  
 KAEDING, ALFRED N. BEDERMAN, )  
 EDWARD A. HOLUB, E. A. HORSCH, )  
 JR., ROBERT E. NILLES, INC. )  
 NORTH SHORE INDUSTRIAL & RESEARCH )  
 CENTRE, VILLAGE OF LAKE BLUFF, )  
 ILLINOIS, AND JOHN E. MURRAY )

MR. RICHARD P. GIOVKA, PRO SE and  
MR. RICHARD R. ELLEDGE FOR COMPLAINANT  
MR. MURRAY R. CONZELMAN FOR NORTH SHORE SANITARY DISTRICT AND  
RAYMOND E. ANDERSON  
MR. KENNETH J. BURNS, JR. FOR ALFRED N. BEDERMAN  
MR. WARREN W. BROWNING FOR THOMAS P. KAEDING  
MR. GERALD C. SNYDER, JR. FOR EDWARD A. HOLUB  
MR. VINCENT J. LOMBARDI AND MR. WILLIAM L. CLARK, FOR ROBERT E. NILLES,  
INC.  
MR. RICHARD B. KUSESKI AND MR. SHELBY YASTROW FOR NORTH SHORE INDUSTRIAL  
& RESEARCH CENTRE  
MR. PETER J. NORDIGIAN AND MR. STEPHEN H. KATZ FOR VILLAGE OF LAKE  
BLUFF, ILLINOIS AND JOHN E. MURRAY

OPINION AND ORDER OF THE BOARD (BY MR. LAWTON):

Citizen's complaint was filed by Richard P. Glovka against the North Shore Sanitary District and Raymond E. Anderson, its Secretary and General Manager, the Village of Lake Bluff and John E. Murray, Village administrator, and six named individuals and corporations. The complaint alleges that specific conduct of the foregoing Respondents, in varying forms, by inquiring about, authorizing, issuing, receiving and using sewer connection permits for certain properties in Lake Bluff, violated Sections 12(a) and (c) of the Environmental Protection Act, caused or threatened to cause water pollution and violated the sewer ban order entered by this Board in case entitled "League of Women Voters v. North Shore Sanitary District, #'s 70-7, 70-12, 70-13 and 70-14" entered March 31, 1971. Raymond Anderson, killed in the recent Chicago and Southern airplane crash was dismissed as a party respondent.

Sections 12(a) and (c) of the Environmental Protection Act provide as follows:

"No person shall:

(a) Cause or threaten or allow the discharge of any contaminants into the environment in any State so as to cause or tend to cause water pollution in Illinois, either alone or in combination with matter from other sources, or so as to violate regulations or standards adopted by the Pollution Control Board under this Act;

(c) Increase the quantity or strength of any discharge of contaminants into the waters, or construct or install any sewer or sewage treatment facility or any new outlet for contaminants into the waters of this State, without a permit granted by the Agency."

"Water pollution" is defined in the Act as:

"Such alteration of the physical, thermal, chemical, biological or radioactive properties of any waters of the State, or such discharge of any contaminant into any waters of the State, as will or is likely to create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish or other aquatic life."

The relevant portion of the sewer ban order provides as follows:

"The District shall not permit any additions to present sewer connections or new sewer connections to its facilities until the District can demonstrate to the Board that it can adequately treat the waste from these new sources so as not to violate the Environmental Protection Act or the Rules and Regulations promulgated thereunder." *LWV v. NSSD, supra, p.28, par. 7.*

The reasons, background and objectives of the sewer ban order resulting from the unsatisfactory operation of the North Shore Sanitary District are set forth in detail in the basic case and the many variation proceedings that have followed and need not be restated in this Opinion. Suffice it to say that the reasons existing for such Order at the time of its rendition maintain during the period of the events involved during the present case.

Lake Bluff owns, operates and maintains a sewer system, which sewers are tributary to interceptor sewers operated and maintained by the North Shore Sanitary District. These interceptor sewers carry the

waste from the village as well as other municipalities to various sewage treatment facilities operated by the District.

Section 283.2, Chapter 42, Illinois Revised Statutes, provides as follows:

"Where any sewer system under the jurisdiction of a city, village or incorporated town is tributary to a sanitary district sewer system, and the board of trustees of such sanitary district finds that it will conduce to the public health, comfort or convenience, the board shall have the power and authority to regulate, limit, extend, deny, or otherwise control any connection to such sewer tributary to the sanitary district sewer system by any person or municipal corporation regardless of whether the sewer into which the connection is made is directly under the jurisdiction of the district or not."

The pattern described in the complaint giving rise to the violations alleged was as follows: Property owners and developers, desiring to build within the Village of Lake Bluff and requiring building permits and authorization from the village to connect to the Lake Bluff sewers, would direct their requests for authorization to the Village. The Village, by a series of letters written by Murray, the Village Administrator, directed to the North Shore Sanitary District's general manager would inquire whether such tie-ins were authorized. The District, in its response to these inquiries, stated that if the requested connection was to sewers previously authorized by the State Sanitary Water Board or the Environmental Protection Agency, such tie-in would be proper. This response was uniformly given irrespective of the fact that the State sewer construction permit pre-dated the Board's March 31, 1971 Order, in some instances by many years, or the fact that the tie-in was subsequent to the issuance of the Board's Order. Never considered in these authorizations was any action the Board had taken respecting the particular parties and requests involved. The District's authorizations for these connections are reflected in letter from its general manager to the Village sanctioning the connections, and will be considered in more detail below. The complaint details the specific instances in which Respondents Kaeding, Bederman, Holub, Horsch, Nilles, Inc. and the North Shore Industrial and Research Centre were granted authorization by the Village for sewer connection pursuant to the general procedure above outlined.

The North Shore Sanitary District is the only party to this proceeding that was also a party to the original case in which the sewer ban order was entered. The gravamen of the complaint against the District is that by virtue of statutory provision above cited (Sec. 283.2, Ch. 42, Ill. Rev. Statutes) the District, although not owning or operating the village sewer system, has specific statutory authority to control and regulate sewer connections to local systems which are tributary to the sewage system of the district and that its authorization to the village was tantamount to the allowance of a permit in each instance and, accordingly, constituted a violation of the sewer ban order, as well as the Environmental Protection Act.

In consequence of the foregoing actions, complainant alleges that all Respondents have violated the Board sewer ban order and have caused, or threatened to cause, water pollution in violation of Section 12(a) of the Act and have violated Section 12(c) in discharging contaminants into the water without a permit granted by the Agency. The entry of orders against all Respondents prohibiting sewer connections and requiring disconnections where made and for the assessment of penalties, is prayed for by the complainant. The District's answer admits the principal allegations of fact alleged, but denies that it is guilty of any wrongful action or in violation of the Board's order or the statute. Its position appears to be that the Board's sewer ban order does not apply in any instances where either a State agency or the District itself had previously authorized sewer construction and that such authority carried with it, without limitation, the capability of sewer connection.

Answer filed by the Village of Lake Bluff contends, in substance, as does the District, that authorization granted prior to the sewer ban by the Environmental Protection Agency and the Sanitary Water Board allow connections to the village's sewer system and that the sewer ban in no way constitutes a revocation of such authorization. The village also asserts a theory of estoppel against the State, premised on the alleged expenditures by the Respondents pursuant to sewer authorizations previously granted. Constitutional arguments as to the Board's power and jurisdiction are also asserted. Answer filed by the North Shore Industrial & Research Centre again relies on an authorization granted by the State Sanitary Water Board to operate a sewer system and alleges an estoppel against the State based on expenditures made prior to the March 31, 1971 order.

By Order the Hearing Officer permitted the Environmental Protection Agency to file a complaint as Intervenor, the allegations of which are similar to the Glovka complaint. The Agency contends that the Act and the Order were violated by the Village acting as spokesman for property owners and developers to seek sewer connection authorizations subsequent to the sewer ban order and directing these inquiries to the district rather than to the Board, and that the District, in sanctioning the connections pursuant to these inquiries, has violated the statute and the Board's order.

The specific actions of request, authorization, allowance and use involving the village, the district and each individual respondent, are set forth. The Agency asks that the District and Respondent Byers, designated as General Manager after the death of Raymond Anderson, cease and desist approval of any further sewer connections, that the Village and its agents cease acting as spokesman for applicants for sewer connections, that the individual respondents be prohibited from making connections without Board approval and that if connections have been made they be disconnected. Assessment of penalties is also sought.

Answer was filed by the Village of Lake Bluff to the complaint of the Intervenor.

A proliferation of motions to dismiss the action was filed by the respondents asserting various legal and constitutional arguments relative to the Board's jurisdiction and power as well as the basic Environmental Protection Act. These motions were disposed of in Opinion entered by the Board on November 23, 1971, where we reiterated our authority to impose money penalties, and our jurisdiction to concern ourselves with Lake Michigan. We confirmed the right of the complainant to bring the proceeding and reaffirmed the validity of our March 31 order. We dealt in that opinion for the first time with the respondent's contention that our sewer ban order did not preclude new connections to existing sewers or by persons who had earlier been granted permits by the Sanitary Water Board. We stated that the contention is incorrect and that the Order is absolute. The Order prohibits addition to present sewer connections or new sewer connections to the facilities of the District. We there noted that the age of the sewer is immaterial, no new connection can be made and that a permit is not a license to violate the law. "Only a variance duly granted by the Board can authorize doing what the law forbids."

We further noted in the opinion that while the District was the only party to the original proceeding, the present complaint alleges that Respondents caused water pollution in violation of the statute, which assertions are not premised on violation of the Board's order. The Opinion observed that new connections could worsen the existing pollution and that a hearing is the proper means for ascertaining the validity of this charge.

Hearing was held on the complaints and answers. Nine stipulations were received between Glovka and each of the named respondents, including a stipulated compilation of exhibits.

No useful purposes will be served by a reiteration in this opinion of all events and the voluminous correspondence involving the Village, the District and various respondents. The essential facts are not in dispute but only their legal consequence. Several legal issues emerge from the proliferation of documents filed: First, whether the sewer ban order operated against those who had previously received authority from the State or the District for the construction of sewers, or who stood in their position as successors in interest. Second, whether the District's sanction of sewer connections to the Lake Bluff sewer system violated the Order and the Act. Third, whether the requests and actions by Lake Bluff violated the Order and the Act. Fourth, whether the acts of the individual respondents pursuant to the authorizations violated either the Order or the Act, and in this respect, whether parties to the present proceeding who are not parties to the March 31 proceeding resulting in the sewer ban Order can, nevertheless, be found liable for aiding, abetting or being an accessory to its violation, and, fifth, what sanctions should be imposed for those violations found to have been committed.

The requests directed to the District by the Village, the District's response authorizing the issuance of sewer connection permits, the permits issued by the Village and subsequent events with respect to each Respondent may be summarized as follows:<sup>1</sup>

The relevant correspondence was principally between Murray, the village administrator, and Anderson, the general manager of the District. On May 5, 1971, Murray wrote to Anderson inquiring whether Kaeding would be allowed a sewer connection based on a 1956 state sewer construction allowance. (C EX 10). A further letter was written on July 13, 1971 (C EX 15). On July 27, 1971, Anderson responded to Murray as follows: (C EX 16)

"Please be advised that we are of the opinion that the permit previously issued by the State of Illinois for the construction of sewers in Page's Lakeland Woods subdivision and Margaret Kennedy Subdivision carry with them the right to connect with the sewers so constructed, and are not affected by the ban of the Illinois Pollution Control Board."

Sewer tapping permit was granted by the Village on July 29, 1971 (C EX 17). Previously, Kaeding had sought a variation from this Board to permit a sewer connection, which variation (C EX 46) was denied by order of the Board entered on July 26, 1971 (C EX 47) which according to Stipulation 3 was received by Kaeding shortly thereafter. Notwithstanding this denial, Kaeding began construction and proceeded to complete the sewer connection.

On May 7, 1971, as a result of inquiry made by Bederman (C EX 8,18) and again on August 2, 1971, Murray, on behalf of the Village, wrote to Anderson requesting information as to whether a sewer connection could be made on property owned by Bederman because of sewer authorization granted by the Sanitary Water Board on December 14, 1966 (C EX 18), a copy of which permit is in the record as C EX 19. On August 4, 1971, Anderson responded to Murray as follows:

"Please be advised that we are of the opinion that the permit previously issued by the State of Illinois for the construction of sewers in Forest Cove Subdivision carried with it the right to connect to the sewers so constructed."

However, on July 2, 1971, Bederman had sought a variance of the sewer ban from this Board. On August 5, 1971, the Board dismissed the variance on the grounds that even if all allegations were proven, the variance would still be denied. Yet, pursuant to the alleged authorization given

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<sup>1</sup> Exhibits, unless otherwise designated, refer to complainant's exhibits admitted by stipulation.

by the District, the Village issued a permit to Bederman on August 24, 1971 permitting sewer connection (C EX 21). No connection appears to have been made to date.

Murray wrote to Anderson on July 13, 1971 relative to property of Horsch (C EX 27) stating that a sewer authorization was issued in March of 1967. Authorization for this connection was given by the District in the July 27 letter above-referred to (C EX 16). A connection permit was issued by the Village to Horsch on August 27, 1971, but was cancelled on September 13, 1971.

Request for authorization to permit sewer connections of Nilles, Inc. appears to have been written by Murray to Anderson on April 15, 1971, to which letter Anderson responded on April 20, 1971 (C EX 29), authorizing the connection based on a pre-existing state permit. (Nilles Ex. 2). As a result of this authorization and one subsequently sent on June 21, 1971 (C EX 30) six building permits, each permitting sewer tie-ins, were issued to Nilles (C Group EX 31), resulting in two sewer connections being made (Stip. No. 2, Par. 10).

Requests to authorize sewer connections for the North Shore Industrial & Research Centre were contained in letters written by Murray to Anderson on May 17, 1971, May 21, 1971 and June 25, 1971 (C EX 33, 35, 44). Authorizations for these connections are found in letters written from Anderson to Murray dated June 21, 1971 (C EX 30) and letter from Conzelman, the District Attorney, to Bleck Engineering dated May 17, 1971 (C EX 38) which states, in part, as follows:

"It is our understanding that all permits issued prior to March 31, 1971 to connect to sewers carry with them the permission to connect those sewers to the existing system. Therefore, it appears that all work construction pursuant to the permits of September 12, 1966, October 19, 1967 and April 18, 1969 include permission to connect to the existing system."

Letter from Anderson to Murray dated July 6, 1971 (C EX 45) likewise contains authorization for the issuance of permits to the Industrial Centre. The State permits on which this alleged authorization are based are found in North Shore Industrial & Research Centre EX 1. As a consequence of this authorization, a construction permit permitting sewer tie-in was issued by the Village on June 19, 1971 (C EX 45A). It will be noted that the permit issued prior to the last-mentioned correspondence. However, the record indicates that no sewer connection has been made by the North Shore Industrial & Research Centre.

The Village of Lake Bluff, by its repeated inquiries of the District, was seeking sanction for what both undoubtedly knew violated the letter and spirit of the March 31, 1971 sewer ban. There is no question that the District took upon itself, unilaterally and in direct defiance of the Board's Order, jurisdiction to allow violation of the law by authorizing the Village of Lake Bluff to permit sewer connections. As stated in our earlier Opinion in this case, the March 31, 1971 sewer ban prohibited sewer connections irrespective of any pre-existing permits granted by the State or the District itself. The order was unequivocal, plenary and without exception. It is also manifest that the individual respondents, to the extent connections were made, acted in violation of the ban. The difficulty in imposing sanctions against them arises from the fact that they were not parties to the original proceeding.

We find that the North Shore Sanitary District has violated the sewer ban order of March 31, 1971 by authorizing the sewer connections above stated. We will order the District to cease and desist the allowance of all sewer connections beyond those expressly permitted by variance or pursuant to our January 31, 1972 Order giving limited relief against the sewer ban order. We direct the District to revoke all previously-granted authorizations upon which the complaint in this proceeding was based and to take all necessary steps to cause disconnection of all sewer connections granted or authorized by the District as above set forth. Because of the apparent good faith reliance on the acts of the District and the Village, connections made by Nilles, Inc. prior to service of this complaint are excepted from this Order. We will impose a penalty of \$5,000.00 against the District for the violations aforesaid.

The conduct of the Village of Lake Bluff in our judgment represents a flagrant effort to circumvent the clear language of the sewer ban order. However, its absence as a party to the original proceeding unfortunately shields it from the imposition of penalties and any cease and desist order. Any future allowance of improperly authorized sewer connections by Lake Bluff, however, will be treated with greater severity. With respect to respondents Kaeding and Bederman, who acted in defiance of our variation denials after having sought our assistance in obtaining permits, we direct them to disconnect any tie-ins they have made and to cease and desist any future tie-in or connection to the Lake Bluff sewer system without proper authority. As to the other individual respondents, we are not disposed on the facts of this case to invoke a doctrine of accessory liability in view of their absence as parties to the original sewer ban proceeding and the absence of an affirmative showing of bad faith on their part.

With respect to the charges that the conduct of all parties caused or threatened to cause water pollution in violation of the statute, we conclude that the evidence does not warrant such a finding. It is true that the original sewer ban was promulgated with the view of preventing



increased water pollution and it might be argued that any new connection in violation of the ban leads to this result, per se. However, in finding violation of the statute and asserting penalties thereunder, subjective proof must be established that water pollution was caused by the specific offense charged. Such proof is lacking in this record.

One further matter remains to be considered. Counsel for the North Shore Sanitary District sought an advisory opinion from a Board member as to whether the sewer ban order prevented connections to sewers previously authorized by the State or the District itself. Interpreting the alleged response to suit his purpose, the District's attorney then promulgated his own legal opinion without seeking Board authorization which he should have known would have been the proper method to proceed. Indeed, the Board had previously indicated upon inquiry of the District that it would not render advisory opinions regarding the precise subject of sewer connections. See LWV v. NSSD Opinion dated May 12, 1971. There we said:

"Our decision has raised a number of important questions which we shall endeavor to resolve in variance or enforcement proceedings as they are brought before us. While it would save time to answer inquiries such as the present one without waiting to accumulate a record in accordance with the Environmental Protection Act and our procedural rules, we think the Act does not permit us to render ex parte advisory opinions as to matters that may be of importance to other parties. We shall be happy to consider the question posed either in a variance proceeding or in a motion to clarify the order after the other parties to the case are served and given the opportunity to respond."

It is inexcusable that as late as May 17, 1971, the District's attorney was advising builders that the sewer ban did not apply to connections to pre-existing sewers. Counsel for the District should be well aware that only the Board can speak for the Board, that advisory opinions are not rendered in any case and that no single member has the power or authority to give binding interpretations of law. The District, in failing to proceed in the proper legal fashion, has acted at its peril. Its authorizations to the Village of Lake Bluff in violation of the sewer ban order are a nullity and must be rescinded. Parties adversely affected by this decision may still proceed by the filing of variance applications or to the extent applicable, seek the benefit of the January 31, 1972 Order in the principal case granting limited relief against the sewer ban order.

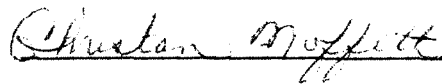
This Opinion constitutes the findings of fact and conclusions of law of the Board.

IT IS THE ORDER of the Pollution Control Board:

1. North Shore Sanitary District shall cease and desist the authorization of sewer connections in violation of the March 31, 1971 order in this proceeding. Authorization shall be permitted only by variance order granted by this Board or by compliance with modification order of January 31, 1972, or pursuant to such regulation as may hereinafter be adopted by this Board.
2. North Shore Sanitary District shall take immediate steps to cause revocation of all authorizations heretofore granted for sewer connection to the sewer facilities of the Village of Lake Bluff and shall take all steps to cause disconnection of any sewer connections heretofore made pursuant to its alleged authorization as stated in this Opinion. Connections made by Nilles, Inc. prior to the service of the complaint are excepted from this Order.
3. Penalty in the amount of \$5,000.00 is assessed against the North Shore Sanitary District for the violations of the March 31, 1971 sewer ban order as stated in this Opinion.
4. Bederman shall cease and desist the connection of any sewer connection to the Lake Bluff sewer system and shall disconnect any connection heretofore made.
5. Kaeding shall cease and desist the connection of any sewer connection to the Lake Bluff sewer system and shall disconnect any connection heretofore made.

Mr. Richard J. Kissel did not participate in the consideration of or decision in this case.

I, Christan Moffett, Clerk of the Pollution Control Board, certify that the above Opinion was adopted on the 17<sup>th</sup> day of February, 1972, by a vote of 4-0.

  
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