

ILLINOIS POLLUTION CONTROL BOARD
June 30, 1983

JOHN S. BURNS,)
)
 Complainant,)
)
 v.) PCB 80-31
)
 VILLAGE OF WESTERN SPRINGS,)
)
 Respondent.)

MR. JOHN R. HIEBER AND MR. THOMAS ELSE OF HIEBER, ELSE & ASSOCIATES
APPEARED ON BEHALF OF THE COMPLAINANT.

MR. ROBERT A. KNUTI AND MS. ANDREA SYKES FOOTE OF LORD, BISSELL &
BROOK APPEARED ON BEHALF OF THE RESPONDENT.

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

On February 14, 1980, John S. Burns filed the complaint in this matter. As recounted in the Board's February 19, 1981 Opinion, Mr. Burns testified that during heavy rains his property at 4419 Clausen Avenue was completely covered with water which would enter his basement through the windows and door. He testified that this "ponded water" was being contaminated by water, toilet paper and human wastes which would enter through a sump pump, a man hole near his property, and had previously entered through a basement toilet which was later removed.

The Board, in Opinions of February 19, 1981 and April 16, 1981, found the ponded waters to constitute "waters of the state", and found the combined sewer flows from the manholes to cause water pollution in violation of Section 12(a) of the Environmental Protection Act. The Board ordered Western Springs to Cease and Desist from such violations. On March 30, 1982, and August 10, 1982, the Appellate Court for the First District, State of Illinois affirmed the Board's finding of pollution, but remanded for further hearings on the technical and economic feasibility of abating the pollution. Village of Western Springs v. Pollution Control Board of the State of Illinois and John F. Burns, #81-117.

On remand hearing, February 4, 1983, the Village of Western Springs provided testimony from Mr. Paul C. Nicholson, Western Springs Village Manager; Mr. Kevin O'Connor, a senior sanitary engineer for the Metropolitan Sanitary District of Greater Chicago (MSDGC); and Mr. Ralph William Lindley, a consulting professional engineer retained by the Village of Western Springs. That testimony focused on the operations of a nearby pumping station that might influence the combined sewer overflow pollution

problem, and other methods of reducing the overflows and ponding. No testimony was provided on behalf of the complainant, Mr. Burns.

When pumps 1 and 2 of the MSDGC's Western Springs Pumping Station are running they pump water in the sewage lines in a northeasterly direction through Western Springs towards a Salt Creek interceptor sewer (Supp. R.67). Such operations might exacerbate the ponding and combined sewer flows near Mr. Burns' residence (Supp. R. 14). However, since the Fall of 1980 the Village of Western Springs and MSDGC have had an agreement that pumps 1 and 2 not be operated (Supp. R. 15, Supp. Ex. 1), the manager of the pumping station has been instructed that pumps 1 and 2 were to remain out of service permanently (Supp. R. 67), the electrical power to pumps 1 and 2 has been off since late 1980 (Supp. R. 78), and the hourly meters for pumps 1 and 2 show zero hours of operation since late 1980 (Supp. R. 76-77). On November 1, 1982, Mr. Burns complained to the Village that pumps 1 and 2 were operating. That complaint was rapidly investigated by the Village (Supp. R. 18, Supp. Ex. 2) and MSDGC (Supp. R. 19, Supp. Ex. 7) and found to be incorrect.

Mr. Lindley testified on the topography and sewer system of the Village, and possible methods of affecting the ponding and combined sewer overflows near Mr. Burns' property (Supp. R. 84-153). He prepared maps of the land contours (Supp. Ex. 9) and sewer system (Supp. Ex. 8) near Mr. Burns' property (Supp. R. 88-91), which showed the property to be in a dish depression near otherwise flat land, thus providing no overland outlet for storm drainage (Supp. R. 93). Ponding, therefore, was a natural result. This ponding is not a circumstance unique to Mr. Burns' property, but occurs in many areas of Western Springs (Supp. R. 103) when the rainfall runoff exceeds the capacity of the gutter inlets to remove it (Supp. R. 95), and the capacity of the combined sewer system to transport the mixed floodwater and wastewaters (Supp. R. 96).

Runoff in areas which flow into the sewer line upstream of Mr. Burns' property cause mixed sewage and floodwater to overflow into the ponded water in Mr. Burns' area (Supp. R. 144). While the parties to this proceeding are justifiably concerned about both the ponded water and the combined sewer surcharging, the Board does not have the jurisdictional authority to address the rainfall runoff and ponding situation alone or to demand it be eliminated, even if such elimination were technically and economically reasonable. The Board's jurisdictional authority is restricted to addressing the pollution caused by the combined sewer surcharging, and to deciding whether that pollution can be abated in an economically reasonable manner.

Obviously, it is possible for Western Springs to construct a totally separate sanitary sewer system and any appropriate lift stations for the combined sewer area in which Mr. Burns resides.

This would eliminate the combined sewer surcharging, but at a very great expense. Another method of abating surcharging near Mr. Burns' property is the placement of check valves to prevent combined sewage from leaving the sewers (Supp. R. 139). This, however, would simply transfer the surcharging to another area (Supp. R. 140), not eliminate it.

The Board notes that the record does not show any reported surcharging near Mr. Burns' property since the discontinuation of pumping from the Western Springs Pumping Station. Also, in 1982 the 54-inch Wolf Road storm sewer was completed which reduces the watershed contributing to overloaded sewers near Mr. Burns' property (Supp. R. 109) by approximately 10% (Supp. R. 127). Future improvements at Wolf Road should further reduce the problem area watershed (Supp. R. 128). Future connection to TARP should significantly improve the situation (Supp. R. 142-143).

In view of the lack of current problems and the continuing improvements to the system, the Board finds Western Springs is taking all economically reasonable steps to eliminate the possibility of combined sewer surcharging. This finding is premised on the Village's continued efforts in flood fighting (Supp. R. 104-105), inspection and maintenance of sewers (Supp. R. 106-108), and on continued inoperation of pumps 1 and 2 of the Western Springs Pumping Station.

The Board reaffirms its findings of February 19, 1981 and April 16, 1981, that Western Springs has violated Section 12(a) of the Environmental Protection Act, but vacates the Cease and Desist Order, and Compliance Plan Order of those dates for lack of any further economically reasonable abatement solution.

This Opinion constitutes the Board's finding of fact and conclusions of law in this matter.

ORDER

Paragraph 2 and Paragraph 3 of the Board's Order of February 19, 1981 and April 16, 1981, in this case are hereby vacated.

IT IS SO ORDERED.

Board Member J. Anderson abstained.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 30th day of June, 1983 by a vote of 3-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board