ILLINOIS POLLUTION CONTROL BOARD

February 6, 1975

HERBERT F. BANGERT,	)	
	)	
Complainant,	)	
	)	
vs.	)	PCB 74-295
	)	
CITY OF QUINCY,	)	
	)	
Respondent.	)	

Herbert F. Bangert, appeared pro se
James N. Keefe, Attorney for Respondent

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

Herbert Bangert, a resident of Quincy, Illinois, filed a Complaint against City of Quincy alleging that the City had constructed a sewer line in violation of municipal codes and without first securing a construction permit from the Environmental Protection Agency. Specifically, Respondent is charged with installing a sewer line that: 1) is too shallow, 2) is only 6" in diameter, 3) has no manhole for clean out, and 4) is not feasible for future connections. Complainant seeks to have Respondent reconstruct the sewer in compliance with municipal codes and Agency requirements in order to eliminate defects now burdening Complainant.

Pursuant to Rule 306 of the Board's Procedural Rules the Agency was requested to provide additional information on the issues. After reviewing the Agency's comment the Board ruled that the case be set for public hearing. Hearing was conducted on December 4, 1974 in Quincy, Illinois.

The sewer line in question is a 245' section of sanitary sewer located at N. 22nd Street between Maple and Sycamore Streets in Quincy. Bangert owns two lots on the west side of N. 22nd. Street. His home is located on one of the lots and the other lot is vacant. Complainant intends to develop the unoccupied lot.

Also on the west side of N. 22nd Street are two homes which were built in 1972 by a Mr. Sandifer. In order to provide sanitary service to the new residences, Sandifer obtained a permit from the

City to construct a 6" sewer line which would run south on N. 22nd Street about 245' until it connected to the larger municipal sewer running east and west on Sycamore Street. Since it was necessary to avoid existing 36" and 42" storm sewers on N. 22nd Street Sandifer was permitted to install the sewer line at an initial depth of 2' to 2 1/2' or about 6" above the storm sewers. As the 6" sewer approaches the Sycamore Street sewer it reaches a final depth of 8'.

Bangert alleges that he constructed an 8" sanitary sewer in 1957 in order to connect his residence to the City sewer system. He was required to conform to all applicable municipal codes during construction of the 8" sewer line. Because of the enforcement of municipal codes in 1957, Bangert claims that he has been discriminated against by municipal actions in regards to the 6" sewer line installed by Sandifer.

Respondent admits that it allowed installation of the 6" sewer line without an Agency permit. The reason given for this violation is that Respondent was not aware until May 15, 1973 of the requirements of Rule 901(b)(2) of the Water Pollution Control Regulations.

In December 1972 Bangert complained to Allen VanDeBoe, Superintendent of Sanitation, that he did not have access to the sewer for the lot he intended to improve. After studying the problem the Sanitation Committee informed Bangert that he could build a house on the lot and connect the sewer. If connection was made the City would assume maintenance responsibilities for the sewer.

Respondent states that it did not hear from Bangert again until he appeared at a May 10, 1973 Committee meeting to voice his complaint about the sewer. The Committee again reviewed the problem and, on May 11, 1973, sent Bangert a letter informing him of the Committee's decision to allow connection to the sewer. Since the lateral sewer would be nearer the surface than normal, Bangert was required to encase the lateral sewer in concrete where it was located under pavement. This requirement was necessary to prevent future damage that might be caused by vehicular traffic.

Cost for the lateral sewer, concrete encasement, and any damage to the roadbed or curbing was to be borne by Bangert. The letter also informed Complainant that the lateral sewer would have to be installed immediately since the City would be resurfacing N. 22nd Street within two weeks. A City ordinance prohibits opening a street for a period of five years after resurfacing.

On May 15, 1973 a meeting was held between Bangert, an EPA employee, and representatives of the City. Respondent states that it was at this meeting that it first learned of the permit requirements. The next day Respondent submitted its construction and operating permit application to the Agency.

Rule 931(a) of the Water Pollution Control Regulations authorizes the Agency to adopt "criteria for the design, operation and maintenance of treatment works and waste water sources". Pursuant to this authority the Agency has adopted Recommended Standards for Sewage Works, Great Lakes--Upper Mississippi River, Board of State Sanitary Engineers, Revised Edition 1971 (also known as the Ten States Standards).

In reviewing Respondent's operating permit application the Agency considered three sections of the Ten States Standards in conjunction with Rule 921(b) of the Water Pollution Control Regulations. The three sections considered were:

Section 25	- No sewer shall be less than 8" in diameter
Section 25.1	- In general, sewers shall be sufficiently deep so as to receive sewage from basements and to prevent freezing
Section 26.1	- Manholes shall be installed at the end of each line; at all changes in grade, size or alignment; at all intersections.

Rule 921(b) provides that "the Agency shall not grant any permit... unless the applicant submits adequate proof that the...sewer... either conforms to the design criteria promulgated by the Agency under Rule 931, or is based on such other criteria which the applicant proves will produce consistently satisfactory results".

After reviewing data in the permit application, the Agency concluded that the 6" sewer would "produce consistently satisfactory results" and thus conformity with Section 25 requirements were not deemed necessary for the "as built" sewer.

Section 25.1 does not establish an absolute requirement that all sewers be constructed to receive sewage from basement sewers. The Agency interpreted Section 25.1 to mean that circumstances could exist that make such construction unfeasible. Existence of the two storm sewers was, in the Agency's opinion, such a "circumstance" therefore the provisions of Section 25.1 were waived.

As to Section 26.1, the Agency concluded that the existence of a "clean out" was sufficient in this case to allow deviation from that requirement.

The record shows that the Agency subsequently issued an operating permit for this 6" sewer but denied the construction permit. Special conditions attached to the operating permit required that service not be extended to more than three residences and that the City assume maintenance of the sewer. The reason given for denying the construction permit was that the sewer had already been constructed and that no modifications were planned.

VanDeBoe testified that two options were avilable to Bangert. If a house without basement is constructed, normal engineering standards would require that fill dirt be brought in to insure that the top of the foundation is at least 1 1/2' above curb level. Then a lateral sewer could be installed from the house to the 6" sewer because the 6" sewer is 30" below the surface and the required slope of 1/2" per foot could be met.

If Complainant desired to construct a house with basement he would be required to install a force pump since the outlet from basement drains or sanitary facilities in the house would be below the level of the 6" sewer. Bangert testified that he estimated the cost of such pump to be at least $5,000.

Bangert states that he did not install the lateral sewer because a plumber had informed him that the sewer could not adequately handle the waste load. According to the Agency comment this issue was investigated thoroughly at the time Respondent's permit was being reviewed.

This investigation revealed that the sewer, with a slope of 1.31%, would be able to carry 411,000 gallons of sewage per day. Using three houses with four persons per house and a factor of 100 gallons of sewage per person per day the Agency calculated an average flow of 1200 gallons per day. Peak flow through the sewer would be 9,600 gallons per day (peaking factor of 8). Using these figures the Agency concluded that the 6" sewer would produce consistently satisfactory results. Conformity with the 8" diameter requirement was not deemed necessary for this "as built" sewer.

Complainant argues that one of the houses now served is a day nursery housing six or more children in addition to the four residents. The other house has four residents. Using these population figures instead of the Agency's 4-to-a-house figure,

Complainant believes that he cannot be expected to receive adequate service. However, when the Agency factors are applied using Complainant's population figures, it can be determined that the average daily flow from these two houses would be 1400 gallons and the peak flow would be 11,200 gallons per day. These flow rates are substantially less than the capacity of the 6" sewer. Therefore, using Complainant's own figures to calculate flow rates the Board is simply unable to find any basis to support Complainant's charge of inadequate capacity.

Complainant next argued that the correct length of the 6" sewer is 232' instead of 245'. No measurements were submitted to prove this claim and, even if such evidence existed, it appears to have little or no bearing on the issue. Complainant claims that the true initial depth is 1.6-2.0 feet instead of 2.0-2.5 feet. Again, no basis is shown for this testimony. Complainant also claims that the 36" and 42" storm sewers are inadequate, cause water to back up in certain yards, causes muddy and mosquito infested areas, are rat harbors and should be replaced. Although Complainant claimed to be able to produce photographs and corroborating testimony to support these two claims, the record contains only his statement.

Complainant claims that the 6" sewer does not have a manhole as required. The record shows that a "clean out" was provided. VanDeBoe testified that the City has several pieces of equipment capable of maintaining the sewer through the "clean out" but no problems have been encountered with the sewer to date which required use of this equipment.

During his testimony Complainant alluded to the existence of a second permit which contained conditions different from the permit of record (Respondent Exhibit #1). Although the Hearing Officer allowed Complainant 14 days in which to produce the second permit, the only permit in the record is that submitted by Respondent.

A number of other allegations or claims by Respondent are contained in this record. Having reviewed these allegations it is our opinion that they are not directly relevant to the issue or are not supported by evidence.

The record shows that Respondent installed the sewer in question withou permit. However, upon being advised of its mistake the City promptly moved to correct the mistake. Upon receiving the permit application the Agency determined that criteria deviations in the sewer were relatively minor and not

substantial enough to require reconstruction.

If the City were required to reconstruct the sewer line a recently resurfaced street would have to be ripped up and traffic would have to be rerouted. Cost to the City would be about $10,000. The Agency doubts that such reconstruction would enable a house with basement to be served.

If the 6" sewer were to be installed under the storm sewers it would apparently have to be at a depth of 10' or 11'. A pump would then be required to lift sewage for a proper connection with the Sycamore Street sewer main.

The Board has some sympathy for Complainant and can understand his feelings since he was forced to follow the City code to the letter and his neighbor was not. However, Complainant was given two opportunities to connect his lateral sewer to the 6" sewer and on each occasion declined the opportunity. We believe the City's offer was reasonable in light of the circumstances and that there is little else that the City could have done.

It is the finding of the Board that Respondent did allow installation of a sewer line without permit in violation of Rule 901(b)(2) of the Water Pollution Control Regulations. This violation was not intentional, did not cause any environmental damage and was promptly corrected once Respondent was informed of the error.

Based on the record before us, we believe that Respondent sought to rectify the mistake in a reasonable manner. We also believe that the Agency decision to issue an operating permit for the sewer was justifiable under the circumstances. We further find that the actions of Respondent have not caused discrimination to Complainant to a degree that will require the existing sewer to be reconstructed. We shall order Respondent to cease and desist from further violations of the type found in this proceeding.

ORDER

It is the order of the Pollution Control Board that City of Quincy shall cease and desist from further violations of Rule 901(b)(2) of the Water Pollution Control Regulations.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order was adopted this 6th day of February, 1975 by a vote of 4 to 0.

Christan L. Moffett