

ILLINOIS POLLUTION CONTROL BOARD
May 29, 1984

JAMES J. CUPP,)
)
 Complainant,)
)
 v.) PCB 83-104
)
 SOUTH PALOS TOWNSHIP SANITARY)
 DISTRICT,)
)
 Respondent.)

MR. JAMES J. CUPP, PRO SE, APPEARED FOR COMPLAINANT;

MSSRS. PATRICK A. LUCANSKY AND THOMAS BAYER (KLEIN, THORPE & JENKINS, LTD.) APPEARED FOR RESPONDENT.

OPINION AND ORDER OF THE BOARD (by B. Forcade):

On July 29, 1983, James J. Cupp ("Cupp") of Palos Park filed this enforcement action against the South Palos Township Sanitary District ("South Palos"). Cupp claimed violations of 35 Ill. Adm. Code 306.304 [overflows of sanitary sewers expressly forbidden] and 306.102(a) [systems reliability of treatment works and associated facilities]. On October 5, 1983, South Palos filed a motion to limit claimants request for relief. On December 22, 1983, a hearing was held in Palos Hills, Illinois.

South Palos provides sewer service to an area approximately one mile wide, running between 127th Street on the north and 135th Street on the south (R. 57); this area includes four or five different water sheds or subsheds draining in different directions (R. 59). Thus, lift stations must be used to transport sewage from certain areas to the treatment plant. Cupp's home is approximately 100 feet from the lift station at 131st Street and 80th Avenue (R. 65). The manhole on that lift station and the lower level living area of Cupp's home are at approximately the same level (R. 75).

During periods of rainfall the sanitary sewers near Cupp's home back-up. Sewage will back-up through Cupp's toilets into the recreation room, study and basement area. Back-ups from the lift station manhole flood Cupp's yard with human waste and toilet paper. Cupp's back-ups began on April 18, 1975 and have continued on the following dates: 4/27/75, 5/25/75, 2/21/76, 9/76, 3/28/79, 3/29/79, 4/11/79, 4/25/79, 4/27/79, 5/23/79, 6/11/79, 6/19/79, 7/24/79, 7/25/79, 8/9/79, 8/14/79, 12/24/79, 1/16/80, 3/27/80, 4/4/80, 6/80, 9/16/80, 3/28/83, 4/2/83, 4/10/83, 4/13/83, 7/1/83, and 7/18/83 (R. 8-11). Cupp has contacted the

South Palos trustees (R. 8), South Palos field workers (R. 11), the Illinois Environmental Protection Agency (R. 11) and filed an informal complaint with this Board on April 11, 1979 (R. 26) in an effort to remedy Cupp's formal complaint.

South Palos testified that the cause of flooding is excessive infiltration and inflow ("I & I") into the sanitary sewer system tributary to the lift station near Cupp's home; inflow in excess of the lift station's pumping capacity (R. 68). On a nationwide basis approximately 20% of the I & I is from the municipal sewers, 80% from the private sewer lines; that ratio should be valid for South Palos (R. 65). Illegal downspout and sump connections contribute significantly to private sewer line inflow (R. 61) and illegal connections exist in South Palos (R. 62). The sewer lines involved are sanitary sewer lines (R. 59). The flooding problem is not limited to Cupp but is experienced by a number of other residents (R. 91, 98).

The Board finds that the sanitary sewer lines of South Palos are overflowing onto Cupp's lawn and home as a result of excessive infiltration and inflow and that this constitutes a violation of 35 Ill. Adm. Code 306.304. Section 306.102(a) requires that treatment works be so constructed and operated as to minimize violation of applicable standards during various types of contingency situations. There is no evidence in the record to support a finding that such a failure during these types of contingencies has occurred, but that count is dismissed. The Board will order a specific program to reduce the infiltration and inflow.

Cupp has requested this Board to order South Palos to pay for damages to his property (Complaint, ¶ 5) and install a collection tank on his property (R. 24). The Board declines to award damages as this would not constitute a civil penalty to aid enforcement of the Illinois Environmental Protection Act. The Board is empowered to assess civil penalties but it cannot award private damages. Accordingly, South Palos's motion to limit relief is granted. Also, while a collection tank and ejector might alleviate the symptoms (Cupp's flooding) it does not address the problem (infiltration and inflow). South Palos testified that they were presently engaging in a door-to-door inspection program for illegal hook-ups (R. 70). This effort should be coupled with a public awareness campaign to inspect homes and inform residents of hook-up restrictions. The Board has, in a previous case, ordered public notification of hook-up restrictions through customer mailings. Village of Bourbonnais v. Illinois Environmental Protection Agency, PCB 83-71, October 19, 1983 at 8. Publication in a newspaper of general circulation is another option. South Palos also testified that there are feasible methods of detecting leaking sewer pipes using smoke or soil saturation techniques (R. 71-72).

South Palos has taken steps to alleviate problems with their sewer system, however, the Board's finding of violation requires that a more formal and comprehensive program be mandatorily implemented. The Board today will order South Palos to develop within 60 days a comprehensive program to evaluate the sources of infiltration and inflow and remedy those problems. That program must, within one year after Board acceptance result in identification of the sources of such excessive flows, elimination of 90% of the illegal downspout and sump pump connections, and application for any available federal funding to cure the infiltration in the public sewer lines.

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

ORDER

1. The South Palos Township Sanitary District has violated 35 Ill. Adm. Code 306.304.
2. The allegation of violation of Section 306.102(a) is dismissed.
3. Within 35 days of the date of the Order, the Respondent shall, by certified check or money order payable to the State of Illinois and designated for deposit into the Environmental Protection Trust Fund, pay the penalty of \$100 which is to be sent to:

Illinois Environmental Protection Agency
Fiscal Services Division
2200 Churchill Road
Springfield, IL 62706

4. Within 90 days of the date of this Order the South Palos Township Sanitary District shall submit to the Board and the Agency a districtwide plan or program to identify and eliminate, as much as possible, the excessive flows to the system's sewers. At a minimum such plan shall call for:
 - a. A schedule of full completion not later than one year from acceptance by the Board;
 - b. elimination of at least 90% of the illegal downspout and sump pump connections;
 1. this effort should include, at a minimum, a public awareness program, which utilizes publication in a newspaper of general circulation and customer mailings coupled with door-to-door inspections and all legal remedies to force homeowner compliance

2. application of smoke and soil saturation tests to identify illegal downspouts and damaged sections of sewers;
 - c. application for any available federal funds to cure infiltration into the public sewers.
5. Within 30 days of the date the South Palos Township Sanitary District submits its plan, the Agency shall provide comments to the Board on the adequacy of the plan.
 6. The Board will retain jurisdiction in this matter until plan approval.

IT IS SO ORDERED.

Board Member J.D. Dumelle concurred.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 29th day of May, 1984 by a vote of 6-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board