ILLINOIS POLLUTION CONTROL BOARD
January 6, 1977

ENVIRONMENTAL PROTECTION AGENCY, Complainant,	)	
v.	)	PCB 76-14
H.W. BUECKER, Respondent.	)	

MESSRS. JOHN VAN VRANKEN and RUSSELL EGGERT, Assistant Attorneys General, appeared for the Complainant;
MR. EDWARD COLEMAN, appeared for the Respondent.

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

This matter comes before the Board on a Complaint filed by the Environmental Protection Agency against Mr. H.W. Buecker on January 12, 1976. The Complaint is comprised of three Counts and pertains to Mr. Buecker's ownership and operation of the Loami Lake Estates Mobile Home Court (Park) located in the Village of Loami, Sangamon County, Illinois. Count I alleges the violation of conditions of the Agency permit issued for the construction and operation of sewage treatment facilities for the Park in violation of Section 12(b) of the Act. Count II alleges operation of the sewage treatment facility without a certified operator in violation of Water Regulation 1201 and Section 12(a) of the Act. Count III alleges that the facility was not constructed and operated so as to minimize violations of applicable standards during maintenance or equipment failure contingencies and that this caused sewage overflows, thus in violation of Water Regulations 601(a) and 602(b) and Section 12(a) of the Act.

The Agency served upon Respondent Buecker its Request for Admissions of Fact on January 26, 1976 (Complainant's Exhibit No. 2). The Board notes that the Request was not drafted so as to inform Respondent Buecker of the consequences of failure to respond. However, no response was given with the twenty day period and the Board will nevertheless consider the presented facts as admitted. The testimony elicited at the March 25, 1976 hearing verifies the fact that these violations did occur (R. 13, 15, 45, 46, 56, 58, 59, 83).

It is clear, then, that the evidence presented by Mr. Buecker related to the factors of mitigation as described in Section 33(of the Act (R. 46), rather than to the issue of whether the viola tions occurred. As to the violation of permit conditions (Count I) Mr. Buecker states that he intended to comply with all of the conditions but the original site had a high water table which made it unsuitable (R. 40,78). New plans were then drawn up for an alternate site, but the Agency was not contacted (R. 83). These new plans contained one very significant change. In order to alleviate the ground water problem, the bottom of the lagoon was constructed at a shallower depth than planned and the dike elevation were raised. This change necessitated the addition of a sewage lift station (R. 41), which was not provided for in the permit. Further, the chlorination facilities specified in the permit were not installed as required. Mr. Buecker reports that chlorination problems existed prior to March 20, 1976 (R. 79). The implication is that these problems were caused by a failure to follow the permit conditions for chlorination. However, there is no doubt that the violations alleged in Count III (overflows) were caused by a malfunction in the lift station (R. 59). Together with the fact that no certified operator was in charge of the plant these facts point to one conclusion: that Mr. Buecker and Mr. Auby (the consulting engineer) had substituted their judgment and their expertise for that of the Agency. More than being a technical violation of the Act and Regulations the conduct of Mr. Buecker has not only threatened the integrity of the permit system, but has also provided us with a very clear example of why that permit system must be protected. The Board is concerned with the fact that the loca pl of the final lagoon outlet facilities and the chlorine contact ch be were changed without consulting with the Agency. The purpose of the permit system is to insure that equipment and facilities installed will not result in violations of the Act and Board Regulations. Such relocations could alter the operation of the facility and its relationship with the environment such as to render the original design inadequate to prevent pollution. It is the Agency's expertise, in reviewing the permit application, which must be used to prevent such situations.

The raw sewage overflows caused by the malfunctioning of the sewage lift station were the result of improper design of the screens, (R.68) which might have been corrected in advance had the permitting process been followed. There has been no showing that it would have been unreasonable for Mr. Buecker to have informed the Agency of his ground water problems and subsequent redesign of the facility.

On the other hand, there is no issue as to the suitability of the plant to the area in which it is located. Nor is there any evidence of severe adverse environmental impact. However,

it is the character of this completely unnecessary interference with the protection of the environment which outweighs the excuses submitted by Mr. Buecker and Mr. Auby. The Board therefore finds that a substantial penalty is necessary in this case to aid in the enforcement of the Act and to fulfill its purpose "to assure that adverse effects upon the environment are fully considered and borne by those who cause them".

Mr. Buecker has already paid a price for his violations in the amount of time and money spent on makeshift corrections and devices at his facility. The fact that he is an experienced plumber and contractor shows not that he should be excused for these violations, but that he should have been familiar with permit procedures. At the hearing, the Agency elicited the gross profits from Mr. Buecker's mobile home park for 1973 ($11,839.00) and 1974 ($12,629.00) (R. 12). The Board finds this information of some help in determining the appropriate amount of a penalty to be imposed. While no figures concerning Mr. Buecker's income from his contracting business were submitted by the Respondent, the Board finds that penalties of $500.00 for the violations in Count I, $200.00 for the violation in Count II, and $100.00 for the violations in Count III are the minimum necessary under the particular facts of this case.

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

Mr. Young abstained.

ORDER

1. The Board hereby finds Respondent H.W. Buecker to have violated the permit conditions and therefore Section 12(b) of the Act as alleged in Count I; Water Regulation 1201 and Section 12(a) of the Act as alleged in Count II; and Water Regulations 601(a), 602(b) and Section 12(a) of the Act as alleged in Count III.

2. Respondent H.W. Buecker shall pay to the State of Illinois: as a penalty for the aforesaid violations in Count I the sum of $500.00, as a penalty for the aforesaid violations in Count II the sum of $200.00, as a penalty for the aforesaid violations in Count III the sum of $100.00. Payment shall be made by certified check or money order within 35 days of the date of this Order to:

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

3. Respondent H.W. Buecker shall cease and desist the aforesaid violations.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 6th day of January, 1977 by a vote of 3-0.

Christan L. Moffett, Clerk
Illinois Pollution Control Board