

Mr. Frieder has been a part-owner of the District since 1951 (R. 205). The District has various long-term leases with its tenants which provide that Mr. Frieder will furnish them with a source of process water (R. 214, 215). Mr. Frieder provides approximately 153,000 gallons per day of water to his tenants (R. 218). Mr. Frieder's lease agreements contain no provision regarding industrial waste treatment. Five sewer lines extend from the District's property (R. 268, 267). However, only two lines are active at the present time and only one is the subject of this enforcement action (R. 268). The industrial waste generated within the District is discharged through these two sewer lines (R. 207).

The District is located approximately 400 yards from the Des Plaines River and is separated from the river by the E.J. & E. railroad tracks and land owned by the Joliet Metropolitan Sanitary District.

The record establishes that the District has in the past provided treatment for the waste originating within the District (R. 234). Treatment consisted of a large septic tank located on the land between the railroad tracks and the Des Plaines River (R. 2). Approximately ten years ago, the Phoenix Company proceeded to fill in the area between the tracks and the Des Plaines River (R. 235). In the process of filling in the land, a large caterpillar tractor partially fell into the septic tank which had been used by the District (R. 235). This destruction of the septic tank and the subsequent addition of a 600-ft. extension of the sewer pipe which ran from the old septic tank to the present site of the District's outfall to the Des Plaines River did not produce any noticeable effect within the Joliet Industrial District (R. 235). The record does not show any additional connection to the 600-ft. extension of the District's industrial sewer line (R. 121 and 212). The Board finds that the District and Mr. Frieder are liable for the industrial wastes that are produced within the District's boundary. The wastes from the 11 tenants enter into a sewer system owned by the District and controlled by the District. The District has in the past provided treatment for this industrial waste (R. 234). The District and Mr. Frieder have exercised a sufficient degree of control over the waste treatment system to warrant a finding that they are liable for the waste generated by the tenants.

Mr. Frieder objected to any findings of violation because the District's sewer system had a tributary sewer line to it that extended beyond the District's legal boundary (R. 269). The Board agrees with Mr. Frieder in that the record does support a finding that there exists a sewer tributary to the District. However, Mr. Robert Hamilton, Mr. Frieder's engineering consultant stated that upon an examination of the tributary sewer line, he ascertained that it had been flowing but on August 3, 1973 it was not flowing (R. 276). Mr. Hamilton testified that on the same day he observed Frieder's outfall sewer at the location where it flowed into the Des Plaines River (R. 168). He testified that the industrial sewer was flowing about one-half full of yellow effluent (R. 169).

The Board finds based on these facts, that Mr. Frieder is responsible for the liquid waste which flows from the Joliet Industrial District because he has allowed the discharge into the Des Plaines River of these wastes.

The Agency bases its alleged violations upon the personal observations of Theodore M. Denning, an Agency engineer, photographs of the District's effluent and chemical analysis of the effluent. Mr. Denning conducted on-site inspections of the industrial out-fall of the District on nine occasions within the time period alleged by the amended complaint. Rule 1.03 of SWB-8 sets forth minimum criteria which "apply to all waters at all places and at all times in addition to specific criteria". This is the so-called four freedoms from substances attributable to municipal and industrial or other discharges that 1) will form bottom deposits that may be detrimental to bottom biota 2) floating scum and other materials that are unsightly or deleterious 3) produce color or odor in such degree as to create a nuisance 4) are toxic or harmful to human, plant, animal or aquatic life.

The Board finds, based upon the exhibits submitted by the Agency, which include Mr. Denning's inspection report for each of his nine site visits and photographs taken by Mr. Denning on three of his visits, that Mr. Frieder has violated Rule 1.03 (a) and (c) on the following dates: May 11, 1971, June 3, 1971, June 10, 1971, June 15, 1971, June 27, 1971, January 12, 1972, May 25, 1972, November 1, 1972 and January 17, 1973. The violation of Rule 1.03 (a) was shown by Mr. Denning's observation of high settleable contents of the effluent on May 11, 1971 (Agency exhibit 1-a), June 3, 1971 visible settleable solids (Agency exhibit 1-b), June 10, 1971 high settleable solids (Agency exhibit 1-c); high concentration of settleable solids, June 15, 1971 (Agency exhibit 1-3); and January 17, 1973 high concentrations of solids (Agency exhibit 14). The Board finds that Rule 1.03 (c) was violated by Mr. Frieder based upon the personal observations of Mr. Denning and photographs he took of the District's outfall on May 11, 1971 a strong odor and a bluish-green color (Agency exhibit 1-a); June 3, 1971 a strong acidic-acid odor and a light blue effluent (Agency exhibit 1-b); June 10, 1971 an effluent that ranged from deep blue to blue-green to orange to red-orange to yellow-green (Agency exhibit 1-c); June 15, 1971 an effluent that varied from kelly green to bluish-green to greenish-blue to dark blue to light yellow-green (Agency exhibit 1-d); July 27, 1971 an effluent with a deep bluish tint (Agency exhibit 12); January 12, 1972 an effluent showing a brownish-orange color and a bright yellow effluent (Agency exhibits 2 and 13); May 25, 1972 an effluent of a purple and bluish color to a green color (Agency exhibit 3); November 1, 1972 an effluent with a redish to orange to yellow (Agency exhibit 8); and January 17, 1973 an effluent with a bright yellowish to orange red coloration (Agency exhibit 14)

While not at issue in this enforcement action the effluent from Mr. Frieder's industrial district was shown by Agency laboratory tests to have produced an effluent with the following parameters and levels: BOD 620 mg/l; pH 2; trivalent chromium 1.3 mg/l; ammonia 12 mg/l; phenol 280 mg/l; cyanide 0.24 mg/l; iron 5.2 mg/l; copper 25.9 mg/l; lead 4.4 mg/l; nickel 3.1 mg/l; fecal coliform 200,000/100 ml; zinc 0.41 mg/l; and mercury 0.4 mg/l.

The Board finds that Mr. Frieder is responsible for the alleged violations and rejects the contention that the violations were caused by an overflow of the Joliet interceptor sewer which serves Statesville Correctional Institution. Photographs introduced by Mr. Frieder document that on occasion this interceptor has overflowed and entered the manhole leading to the District's outfall sewer. This would only occur at times of excessive rainfall. Agency exhibit 18, a letter from Robert Hamilton who is Mr. Frieder's consulting engineer, to the Agency states that:

"Currently the 15-inch sanitary sewer serving the Joliet Industrial District passes through a man-hole on a 24-inch City of Joliet interceptor sewer, obstructing the flow in the sewer and severely limiting its up-stream capacity."

The Board finds that Mr. Frieder has created the defense upon which he is partially resisting the Agency's complaint, namely the overflow of the 24-inch Joliet interceptor sewer.

The Board also finds that Mr. Frieder has violated Section 12(a) of the Environmental Protection Act in that he has caused, threatened, or allowed the discharges of contaminants in sufficient quantities to have caused water pollution because of excessive color, pH and suspended solids.

On June 3, 1971 Mr. Frieder and two Agency engineers, Mr. Leland and Mr. Denning, held a meeting to discuss the water pollution stemming from the District (Agency exhibit 1-b). The results of the first four plant inspections by Mr. Denning were sent to Mr. Frieder on December 9, 1971 by the Agency (Agency exhibit 1). Mr. Frieder testified that the District has been discharging into the river since approximately 1961 (R. 234). Mr. Hamilton, Mr. Frieder's consulting engineer, testified that to correct the direct discharge into the Des Plaines River, all that is required is a matter of a couple of hours job to open the District's sewer where it flows through the Joliet 24-inch interceptor and block the place where it exits the sewer (R. 190). On July 18, 1973 the District issued a permit to Mr. Frieder to discharge the wastes from the District into the 24-inch City of Joliet interceptor sewer (Agency exhibit 11). Mr. Hamilton testified that as of August 3, 1973 the work had not been done (R. 190). Mr. Frieder testified

that what was holding up the diversion to the Joliet Sewage Treatment Plant was negotiations over the cost per gallon of treating the wastes (R. 223).

The Board has decided to levy a \$1000 penalty for the 9 days that a violation of Rule 1.03 of SWB-8 was found. The Board further assesses a \$500 penalty for violation of Section 12(a) of the Environmental Protection Act.

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

ORDER

The Illinois Pollution Control Board finds that Roland W. Frieder d/b/a Joliet Industrial District has violated Rule 1.03 of SWB-8 and Section 9(a) of the Environmental Protection Act and orders that Roland W. Frieder pay a \$1,500 penalty for those violations. Penalty payment by certified check or money order payable to the State of Illinois shall be made to: Fiscal Services Division, Illinois Environmental Protection Agency, 2200 Churchill Drive, Springfield, Illinois 62706.

The Board orders that Roland W. Frieder d/b/a Joliet Industrial District cease and desist from future violations by March 15, 1974.

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 14th day of February, 1974 by a vote of 5-0.


Christan L. Moffett, Clerk
Illinois Pollution Control Board