

ILLINOIS POLLUTION CONTROL BOARD  
April 3, 1980

ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB 78-135
	)	
VILLAGE OF PALOS PARK,	)	
a municipal corporation,	)	
	)	
Respondent.	)	

MR. THOMAS R. CHIOLA, ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF THE COMPLAINANT.

MCCARTHY, SCHEURICH, DUFFY, NIEDHART AND SNAKARD, ATTORNEYS AT LAW (MR. THOMAS J. MONTGOMERY, OF COUNSEL), APPEARED ON BEHALF OF THE RESPONDENT.

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

This matter comes before the Board on the May 10, 1978 Complaint brought by the Illinois Environmental Protection Agency ("Agency"). Count I of the Complaint alleged that the Village of Palos Park ("Village") did not submit the requisite progress report by December 31, 1977 pertaining to the submission of a formal application to the State of Illinois for a Step 1 grant as required by its NPDES Permit, thereby violating its NPDES Permit; Rule 901 of Chapter 3: Water Pollution Control Regulations ("Chapter 3"); and Sections 12(a), 12(b), and 12(f) of the Illinois Environmental Protection Act ("Act"). Count II alleged that the Village did not enact an ordinance which would prohibit the connection of non-complying industrial or domestic wastes into the existing storm or existing field tile sewer system within the municipality's boundary and did not submit a copy of such an ordinance to the Agency by the October 31, 1977 due date established in the NPDES Permit, thereby violating its NPDES Permit; Rule 901 of Chapter 3; and Sections 12(a), 12(b), and 12(f) of the Act.

On December 20, 1978, the parties filed a Joint Motion for Stay. On January 4, 1979, the Board granted the parties' Motion to Stay the proceedings for 60 days while settlement negotiations were in progress. On January 10, 1980, the Board entered an Order mandating that a hearing be held within 60 days. On February 8, 1980, a hearing was held and the parties filed their Stipulation and Proposal for Settlement.

The Village of Palos Park is a small community which includes about 1,000 homes. Because the Village has no municipal sewage treatment facility, some of the homes are connected to the Metropolitan Sanitary District of Greater Chicago's system, while other residences discharge their sewage into "Cavitettes" or septic tanks and ultimately into an unnamed ditch tributary to the Calumet Sag Channel.

The Respondent's NPDES Permit No. 0039012 treats all the individual discharges from the "Cavitettes" as one discharge point. (See: Exhibit A). Agency review of the situation indicated that the Village failed to comply with the conditions imposed upon it. (See: Exhibit B; Stip. 3-4). Although the Respondent neither admits or denies the allegations specified in the Complaint, the Village does state it is currently in compliance. (Stip. 5).

The proposed settlement agreement provides that the Respondent agrees to: (1) cease and desist from all further violations; (2) submit all future reports as required in its NPDES Permit in a timely fashion; (3) take 6 random water samples per month, have the samples analyzed, and send the sample results and analyses to the Agency; and (4) pay a stipulated penalty of \$200.00\*. (Stip. 5-7).

In evaluating this enforcement action and the proposed settlement agreement, the Board has taken into consideration all the facts and circumstances in light of the specific criteria delineated in Section 33(c) of the Act. The Board finds the stipulated agreement acceptable under Procedural Rule 331 and Section 33(c) of the Act. The Board finds that the Respondent has violated Rule 901 of Chapter 3: Water Pollution Control Regulations and Sections 12(a), 12(b), and 12(f) of the Act. The stipulated penalty of \$200.00 is assessed against the Village of Palos Park.

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\*The ambiguous wording of paragraph 14 of the Stipulation seems to suggest that \$1,800.00 of a prospective penalty has been suspended by the parties. As the Board has repeatedly noted, the imposition of contingent or suspended penalties is unacceptable. (See: EPA v. Village of Ridgway, PCB 79-3; EPA v. Village of Millstadt, PCB 78-132; EPA v. Sundale Sewer Corporation, PCB 78-88 and PCB 78-225 Consolidated; EPA v. International Harvester Company, PCB 75-12; EPA v. Granite City Steel, PCB 78-233). Since the determination of the appropriate penalty is, by statute, solely within the Board's purview, the Board interprets paragraph 14 to imply that only a penalty of \$200.00 has been agreed to by both parties and the mention of the \$1,800.00 figure is merely dicta.

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

ORDER

It is the Order of the Illinois Pollution Control Board that:

1. The Respondent, the Village of Palos Park, has violated Rule 901 of Chapter 3: Water Pollution Control Regulations and Sections 12(a), 12(b), and 12(f) of the Illinois Environmental Protection Act.
2. Within 35 days of the date of this Order, the Respondent shall, by certified check or money order payable to the State of Illinois, pay the stipulated penalty of \$200.00 which is to be sent to:

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

3. The Respondent shall comply with all the terms and conditions of the Stipulation and Proposal for Settlement filed February 8, 1980, which is incorporated by reference as if fully set forth herein.

Chairman Dumelle and Mr. Goodman concur.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order were adopted on the 3<sup>RD</sup> day of April, 1980 by a vote of 5-0.

  
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Christan L. Moffett, Clerk  
Illinois Pollution Control Board