

ILLINOIS POLLUTION CONTROL BOARD
April 3, 1980

ENVIRONMENTAL PROTECTION AGENCY,)
)
 Complainant,)
)
 v.) 78-131
)
 HENRY J. LIPPMAN and BILL NELSON,)
 d/b/a PRESTCRETE CORPORATION,)
)
 Respondents.)

MS. SUSAN H. SHUMWAY AND MS. NANCY J. BENNETT, ASSISTANT ATTORNEYS GENERAL, APPEARED ON BEHALF OF THE COMPLAINANT.

MR. KENNETH J. GUMBINER, PEDERSEN & HOUP, APPEARED ON BEHALF OF THE RESPONDENTS.

OPINION AND ORDER OF THE BOARD (by Dr. Satchell):

This matter comes before the Board upon a complaint filed May 10, 1978 by the Environmental Protection Agency (Agency) naming as Respondents Henry J. Lippman and Bill Nelson d/b/a Prestcrete Corporation (Prestcrete). An amended complaint was filed on November 15, 1978. The complaint alleges that Respondents discharged contaminants into the waters of the state without an NPDES permit in violation of Section 12(f) of the Environmental Protection Act (Act) and Rule 901 of Chapter 3: Water Pollution (Chapter 3). Further counts alleges violations of Section 12(a) of the Act and Rules 203(a), 203(b), 203(f) and 403 of Chapter 3 and a violation of Rule 305 of Chapter 7: Solid Waste Rules and Regulations (Chapter 7). A hearing was held on November 20, 1978. A motion to dismiss the individual Respondents was made at the hearing. Since the Agency had no objection, Henry J. Lippman and Bill Nelson will be dismissed.

At the hearing the parties stipulated that Prestcrete is a corporation, that it operates the Prestcrete Manufacturing Plant south of U. S. Route 34 in Plano, Kendall County and that it did not have and never had an NPDES permit. Prestcrete applied for a permit on April 14, 1978 but at the time of the hearing the Agency had not acted on the application.

The site is situated on the northwest side of an abandoned quarry at the top of a steep bank. To the south is a man made lake within the quarry (Comp. Ex. D, 9). The gist of the complaint

is that Prestcrete pushes its solid waste into the quarry and discharges its liquid waste to a ravine which flows into the quarry and thence into the lake which it does not entirely own (R. 15). Prestcrete has argued that the discharge to the lake does not require an NPDES permit because it is not a navigable water. However, Prestcrete's application for an NPDES permit is an admission that the discharge was to a navigable water.

Other than the stipulated facts, Prestcrete presented no evidence whatsoever. This case therefore presents no questions involving relative weight of evidence. The only issue before the Board is whether the Agency has made out a prima facie case substantiating the allegations of the complaint.

The Agency witness Theodore M. Denning visited the site on January 25, 1978. Prestcrete has run a prestressed concrete forming and washing operation there since 1970 (R. 15). The concrete slabs are washed with a proprietary chemical and are then rinsed with acid and clear water (R. 15, 16). On January 25, 1978 Mr. Denning observed a "broad delta-like deposit from the area of the concrete slab washing operation which went towards the edge of the quarry" (R. 21). There was a thin sheet of grayish liquid in the deposit. The liquid appeared high in suspended and settleable solids and there were some areas of reddish coloration (R. 21). On that day the lake itself was covered with snow (R. 22). There were areas that had been filled with debris from the operation (R. 22). Complainant's Exhibit C shows results of laboratory results on tests run from samples taken at Respondent's site. There was no testimony given concerning where and how the samples were taken.

The Board finds the Respondent was in fact discharging contaminants into the lake without an NPDES permit and that this constitutes a violation of Rule 901 of Chapter 3 and Sections 12(a) and 12(f) of the Act. Respondent's effluent contained settleable solids and color was not reduced below obvious levels in violation of Rule 403 of Chapter 3. The allegations of violations of Rules 203(a), 203(b) and 203(f) of Chapter 3 and Rule 305 of Chapter 7 will be dismissed because the evidence is insufficient to support findings of violations.

In considering the factors of Section 33(c) of the Act the Board has very little information since Respondent did not present any testimony, Processing and Books, Inc. v. PCB, 351 NE 2d 865 (1965). The character and degree of injury is difficult to assess since the Board does not know the exact nature of the contaminants; however, the Agency investigation was in response to complaints

from a fishing club which uses the quarry lake (R. 13, 14, 15). Respondent's business has social and economic value. Information concerning the suitability of the pollution source to the area was not brought forward. Compliance is practicable since a permit application has been submitted. The Board observes that the purpose of a permit system is to provide information concerning contaminants and for the protection of the public.

In a letter dated March 16, 1979 Prestcrete's attorney requested a stay of this proceeding because Prestcrete had filed under Chapter XI of the Federal Bankruptcy Act. On March 29, 1979 the Board denied the stay. Attached to the motion was a copy of an Order signed by the bankruptcy judge. Among other things the Order states that : "The filing of the petition by the debtor above named operates as a stay of the commencement or continuation of any court or other proceeding." Prestcrete contends that this action is an "other proceeding" within the meaning of the Bankruptcy Act and cites Hillsdale Foundry Co. v. State of Michigan and Litchfield Industrial Corp., W. D. Michigan, November 18, 1974 in support of its position. The result of this case has apparently been reversed by Section 362(b)(4) of the new Bankruptcy Act which took effect October 1, 1979. The decision as to whether this case should be stayed under the Bankruptcy Act is the exclusive prerogative of the federal courts. The bankruptcy judge's order is directed to: "The debtor, its creditors and other parties in interest." No copy was served upon the Board. However, the Board has considered the Chapter XI status in mitigation as evidence of inability to pay a large fine.

Having considered all the factors enumerated above, the Board finds that a penalty of \$250 is necessary to aid the enforcement of the Act.

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

ORDER

It is the order of the Pollution Control Board that:

1. Respondents Henry J. Lippman and Bill Nelson are dismissed.

2. Prestcrete Corporation is found in violation of Rule 901 of Chapter 3: Water Pollution and Section 12(a) of the Environmental Protection Act; Section 12(f) of the Act; and Rule 403 of Chapter 3.
3. The allegations of violations of Rules 203(a), 203(b) and 203(f) of Chapter 3 and Rule 305 of Chapter 7: Solid Waste Rules and Regulations are dismissed.
4. Prestcrete Corporation shall cease and desist from further violations of the Act and Board Rules.
5. Within thirty-five days of the date of this Order, Respondent shall, by certified check or money order payable to the State of Illinois, pay a civil penalty of \$250 which is to be sent to:

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

Mr. Werner Dissented.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 3rd day of April, 1980 by a vote of 4-1.

Christan L. Moffett gw
Christan L. Moffett, Clerk
Illinois Pollution Control Board