ILLINOIS POLLUTION CONTROL BOARD
October 14, 1971

ENVIRONMENTAL PROTECTION AGENCY	)	
	)	
v.	)	PCB 71-109
	)	
WILLIAMSON COUNTY HOUSING AUTHORITY	)	

Frederick C. Hopper for the Environmental Protection Agency
James Bleyer for the Williamson County Housing Authority
Douglas Ingold for the Colp Residents Improvement Association

Opinion and Order of the Board (by Samuel R. Aldrich):

The Williamson County Housing Authority ("Housing Authority") owns and operates a public housing project located in Colp, Illinois. On May 13, 1971, the Environmental Protection Agency ("Agency") filed a complaint against the Housing Authority alleging violations of one or more of the following: Section 10 and 11 of the Sanitary Water Board Act, Section 12 (a), 12 (b), 12 (c), and 12 (d) of the Environmental Protection Act. On May 24, 1971, a petition to intervene was submitted by the Colp Residents Improvement Association ("CRIA"), a nonprofit corporation composed of residents of the Colp housing project. The CRIA entered a complaint against the Housing Authority alleging the same violations of water pollution regulations as those complained of by the Agency. In addition, a violation of Section 9(a) of the Environmental Protection Act ("Act") was alleged. The evidence substantiates several of the charges and we will order that a money penalty be paid. We will also require Respondent to take steps to ensure that no further violations occur.

Before considering the merits of the case, it is necessary to consider a number of issues raised at the hearing by counsel for the Respondent.

First, the Housing Authority denies that the Agency has complied with the rules for the issuing of a complaint. The basis for this allegation is apparently that a number of informal contacts occurred between the Agency and Respondent in which the likelihood of legal action was discussed. However, a written notice, together with a formal complaint, were served upon Respondent as required by Section 31(a) of the Act. We find that the Agency has fully complied with the rules.

Respondent further alleges that the Act is unconstitutional and violates the due process clause of the United States Constitution and the Constitution of the State of Illinois. We find these allegations to be deficient in that Respondent fails to specify how it is denied due process by the Act. The issues of constitutionality and due process have been dealt with elsewhere (EPA v. Granite City Steel Co., PCB 70-34, March 17, 1971). There we noted that "...the statute does not apply in any case in which its application would be unconstitutional." Respondent's argument is wholly without merit.

Respondent next denies that the Attorney General of the State of Illinois is the proper party to bring action against it. Here Respondent is simply mistaken. The complaint was in fact filed not by the Attorney General but by the Agency, in accordance with Section 31(a) of the Act. We hold, however, that it is entirely legal and proper for the Attorney General to bring action or to intervene if he chooses. We note further Rule 303 (b) of the Board's Procedural Rules which states that "Misnomer of a party is not a ground for dismissal, but the name of any party may be corrected at any time." Thus, even if the complainant had been misnamed we would not dismiss the complaint.

The Housing Authority further alleges that the Attorney General of the State of Illinois acts both as a judge and jury in the instant case and demands that the Attorney General be disqualified from the proceedings. Such statements reveal a serious misunderstanding of the situation. Section 33 (a) of the Act provides that the final determination in enforcement cases is to be made by the Pollution Control Board. The Office of the Attorney General provides legal assistance to the Agency in presenting enforcement cases before the Board. We reject Respondent's demand that the Attorney General be disqualified.

Respondent next denies that the Southern Illinois Legal Aid Society, Inc., which provided attorney fees for the CRIA, has any standing to appear in the proceedings and says that the Society is federally funded and in effect receives funds similar to those received by the Agency. The Housing Authority further states that it is being tried by a "conspiracy of governmental agencies." Section 310(a) of the Board's Procedural Rules allows the Hearing Officer to permit any person to intervene in an enforcement proceeding either when the applicant might be adversely affected by the Board's final order or when the applicant's claim and the enforcement proceeding have a question of law or fact in common. Clearly, both conditions are met in the instant case. Section 32 of the Act permits any party to an enforcement hearing to be represented by counsel and places no restriction on the source of funds by which counsel is remunerated. Moreover, the Agency does not receive direct financial support from the federal government as Respondent alleges. The Agency merely disperses federal funds to other parties for the purpose of pollution control. The allegation of a "conspiracy" is completely unfounded.

Finally, Respondent demands a trial by jury, contending that since the Agency in its complaint requests a money penalty, a jury trial is guaranteed by the Constitution of the State of Illinois and by the United States Constitution. This argument was refuted in an earlier case (EPA v. Modern Plating Corporation, PCB 70-38, May 3, 1971). There we held with extensive citation of federal and state authorities that the imposition of money penalties does not constitute a criminal sanction necessitating a jury trial.

We now consider the merits of the case. It is appropriate first to describe the events which culminated in the present situation. Construction of the housing project began in 1968 (R. 144). The original request to the State called for a three-stage oxidation disposal system. This was dropped when the Village of Colp, which was not then served by sanitary sewers, assured the Housing Authority that a municipal sewage disposal system would be completed by the time the housing project was finished (R. 144). The Housing Authority intended to connect the housing project to the municipal system at that time (R. 125). Because of financial difficulties encountered by the Village, the municipal system was not completed when anticipated. As a result, the Housing Authority applied to the Sanitary Water Board for a permit to install the three-stage oxidation pond with effluent chlorination facilities. A permit was granted in February of 1969 (EPA Ex. 1). Only the first stage was ever installed (R. 147). In place of the original three-stage lagoon system, Respondent installed an extra-large single holding lagoon believed adequate for two years and committed part of the money thus saved to assist the village in expediting the municipal system. In February of 1970 the Sanitary Water Board ordered the Housing Authority to complete its treatment facilities according to permit specifications. The project was to be completed by May 15, 1970 (EPA Ex. 5). The three-stage system was not completed by that date, however. In May of 1971 the Environmental Protection Agency filed a complaint against the Housing Authority. At this point the Housing Authority decided to close the facility and in fact issued eviction notices to the tenants (R. 156). The notices were later rescinded, however, after the Housing Authority was informed by the Agency that no additional penalty would be sought if the facility were to remain open (R. 157, 167). At the time of the hearing on June 29, 1971, wastes from the housing project were still being treated in a single lagoon. The municipal system had still not been completed, although construction was begun in May of this year (EPA Ex. 4). It was anticipated that the system would be completed and in operation within 90 days, that is, by September 29, 1971 (R. 117).

There can be no doubt that the Housing Authority has violated the terms of the permit granted it by the Sanitary Water Board. It is indeed unfortunate that the Village was delayed in completing its treatment facilities. Connection of the housing project to the municipal system will provide the best long-term solution to the project's waste problems. Nonetheless, the Housing Authority's procrastination over the past two years cannot be excused. We are aware that the Housing Authority relied upon a false hope that it could attach to the municipal system before a problem arose but we feel that it was the responsibility of the Housing Authority to complete and use its own facilities until such time as the municipal system became operational. Respondent was in violation of Section 12 (b) and 12(c) of the Act.

The record indicates that the single lagoon operated satisfactorily for about one year (R. 101, 150). A witness for the Agency testified that on October 28, 1969, he observed seepage of material from the lagoon in two places (R. 44). On another occasion he observed that no overflow structure had been provided and that the contents of the lagoon were discharging to a ditch through a pipe (R. 46). Laboratory analysis indicated that the discharge exceeded the limits for BOD and suspended solids specified by Rules and Regulations SWB-14 (EPA Ex. 3). On June 28, 1971, the same witness again observed seepage of material from the lagoon and what appeared to be septic domestic sewage present in a natural drainageway (R. 48). He further testified that a failure of the dike surrounding the lagoon was a possibility if heavy surface runoff into the lagoon were to occur (R. 49). Another witness for the Agency testified that the ditch into which material was seeping is connected to Hurricane Creek, which in turns joins the Big Muddy River (R. 68). Julius Steinmarch, Executive Director of the Housing Authority, denied that any seepage could reach streams or waterways of the State (R. 160). Nevertheless, the evidence indicates that a violation of SWB-14 did occur and that a threat of water pollution did exist. We find Respondent has violated Section 12(a) of the Act.

Testimony was presented that the lagoon has been unsatisfactory in other respects: a source of mosquitoes (R. 92, 104, 106, 114), and a danger to young children since it was fenced on three sides only (R. 104, 112). Gladys Berdette, President of the CRIA, testified that on several occasions sewage backed up from the lagoon into her home (R. 92). However, Frank Caliper, who installed and has maintained the plumbing at the housing project, stated that this occurred because residents placed items in the sewer which should not have been put there (R. 128).

The most common complaint voiced at the hearing concerned odors emanating from the lagoon (R. 92, 103, 104, 108, 114). Mr. Caliper, who is mayor of Colp, stated that conditions at the housing project with regard to odor were very similar to those which existed elsewhere in the Village (R. 130). The fact that there are other sources of objectionable odors is no reason that the residents of the housing project should have to live with odors from the lagoon. Clearly, an intolerable situation has existed at the housing project, and there is reason to believe the lagoon has been in large measure responsible. We find Respondent has violated Section 9(a) of the Act. For this and other violations previously mentioned we will assess a penalty of $500.

We now consider what action can be taken to ensure that no further violations will occur. We agree with counsel for the Agency who expressed the view that continuance of the housing project is an important goal (R. 9). Closure of the facility is certainly an unsatisfactory solution to the problem at hand. Lawrence Lipe, whose

engineering firm was hired by the Village of Colp for its sewage treatment project, testified that the municipal system should be completed within 90 days, that is, by September 29, 1971 (R. 117). Accordingly, the question of further use of the existing lagoon by the Housing Authority is in all probability moot. By the date our order is entered the municipal system should be in operation and capable of receiving wastes from the housing project. We will order Respondent to verify that such is indeed the case. To ensure that the lagoon in question is no longer used we will order that its contents be transferred to the municipal treatment facilities and that it then be filled and graded back to the original contour.

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

ORDER

1. By November 1, 1971, the Williamson County Housing Authority shall submit to the Environmental Protection Agency and to the Pollution Control Board an affidavit indicating whether or not the human wastes from the Colp Housing Project are at that time being treated by the sewage treatment facilities of the Village of Colp.

2. By December 1, 1971, the Williamson County Housing Authority shall cause the contents of its existing lagoon to be transferred to the sewage treatment facilities of the Village of Colp, and shall further cause the lagoon to be filled and graded back to the original contour.

3. The Williamson County Housing Authority shall, within 35 days from the date of entry of this order, submit to the State of Illinois the sum, in penalty, of $500.

I, Regina E. Ryan, Clerk of the Pollution Control Board, hereby certify that the Board adopted the above opinion and order this 14 day of October 1971.