

ILLINOIS POLLUTION CONTROL BOARD
January 24, 1980

ENVIRONMENTAL PROTECTION AGENCY,)
)
 Complainant,)
)
 v.) PCB 79-24
)
 VILLAGE OF DESOTO, an Illinois)
 Municipal Corporation, and)
 CLIFFORD HALE,)
)
 Respondents.)

MR. PATRICK J. CHESLEY, ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF THE COMPLAINANT.

MR. CHARLES W. DECKER, ATTORNEY AT LAW, APPEARED ON BEHALF OF THE VILLAGE OF DESOTO.

MR. DONALD E. ELMORE, ATTORNEY AT LAW, APPEARED ON BEHALF OF CLIFFORD HALE.

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

This matter comes before the Board upon a complaint filed by the Environmental Protection Agency (Agency) on February 2, 1979. An amended complaint was filed on April 10, 1979 alleging: Respondents caused or allowed the construction of a sewer extension from River Bend Estates Subdivision of the Village of DeSoto (Village), Jackson County, without a permit in violation of Sections 12(a) and (b) of the Environmental Protection Act (Act) and Rules 951(a) and 952(a) of Chapter 3: Water Pollution (Chapter 3); that Respondent Hale constructed a sewer in River Bend Estates Subdivision and Respondent and the Village operated such sewer in violation of permit conditions in violation of Section 12(b) of the Act; and, that Respondents have caused or allowed the discharge of raw sewage containing obvious color, odor and turbidity from a hole in a manhole in violation of Section 12(a) of the Act and Rules 403, 602(b) and 951(a) of Chapter 3. A hearing was held concerning this matter on August 30, 1979. At that time two stipulations were presented for Board approval. Each stipulation involved the Agency and one of the Respondents. No testimony was given and no members of the public commented.

The stipulations agree concerning the basic facts. Clifford Hale was issued permit #1974-IA-1549 by the Agency for the construction of sewers and a lift station in the River Bend Estates

Subdivision in the Village of DeSoto, Jackson County, Illinois. Mr. Hale constructed a sewer system which did not conform with the permit. Fewer than the specified number of manholes were installed and pumps other than those specified were installed in a lift station. Without the knowledge of the Village, Respondent Hale constructed an extension to three houses beyond the subdivision without the proper permits for construction or operation. Respondent Hale has sold several houses in the subdivision and on the extension. Since occupancy sewage has passed through the sewers. The Village has accepted sewage from the extension since approximately September, 1977. In October, 1975 the Village began assessing user charges against residents who were on the main sewer line in the Subdivision. On October 6, 1977 the Village learned of the sewer extensions.

On or before December 14, 1978 Respondent Hale knocked a hole in Manhole #5 of the Subdivision sewers. He also put a hole in the side of Manhole #1, the lift station, without a construction permit. Raw sewage has been discharged from the hole in Manhole #5. This sewage contained color, odor and turbidity levels which were obvious. The Village later became aware of the holes.

The Village feels that it has pursued the only reasonable course in this matter. For the Village to comply completely with the law, it would have to shut off the sewer system from the River Bend Estates Subdivision and not accept any sewage at all. The Village felt that this would place an unreasonable hardship on the innocent thirty homeowners who are attached to the sewers and the sewer extension in the subdivision. The Village is willing to accept the sewers when they are properly completed.

The Village is willing to supply its own equipment and manpower at cost to bring the system into compliance, upon payment by Respondent Hale for out-of-pocket expenses.

Respondent Hale agrees that he will correct the present sewer system in the River Bend Estates Subdivision so that it conforms to the original plans and specifications as submitted in his permit application and Permit #1974-IA-1549. The specific details are set out in the stipulation. Respondent Hale agrees that these corrections will be completed by no later than December 1, 1979 unless circumstances prevent completion as a result of an act of God or by circumstances beyond his control or by any other circumstance agreed to by the parties in writing. Notice of extension shall be as provided in the stipulation.

Respondent Hale further agrees to submit an application for variance for all the homes which have been tied onto the sewer extension to the sewers in the subdivision. Mr. Hale agrees that he will submit such a variance request within thirty days after the Board Order accepting this stipulation.

Respondent Hale agrees to submit a permit application for the sewer extension that is based on as built plans. He agrees to correct any deficiencies to meet permit requirements. Submission of the application will be within thirty days of acceptance of this stipulation.

The Agency agrees that it will recommend the variance be granted for all houses on the sewer extension that have already been constructed provided the variance petition is consistent with the stipulated settlement, the Act and the Procedural Rules.

Respondent Hale will notify the Village and the Agency when all corrections are completed. A joint inspection will then be made by all parties.

The parties agreed that the sewer system and extension have social and economic value, that it is technically practicable to correct the sewer system to come into compliance and that it was economically reasonable for Respondent Hale to bring the sewer system into compliance.

Considering the nature of the Village's involvement and its willingness to cooperate and take reasonable action to correct the problems it was agreed that the Village would pay no penalty. Considering Respondent Hale's violations and his agreement to correct them a penalty of \$1000 will be paid by Respondent Hale.

The Board finds both stipulated agreements acceptable under Procedural Rule 331. The Board finds Respondents in violation of Rules 951(a) and 952(a) of Chapter 3 and Sections 12(a) and (b) of the Act; Section 12(b) of the Act; and Rules 403, 602(b) and 951(a) of Chapter 3 and Section 12(a) of the Act. The Board agrees that considering the nature of the involvement of the parties that the Village of DeSoto shall not be assessed any penalty and that Clifford Hale shall pay a penalty of \$1000 in order to aid the enforcement of the Act. The parties will each be bound to the respective stipulations.

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 are found in violation of Rules 951(a) and 952(a) of Chapter 3: Water Pollution and Sections 12(a) and (b) of the Environmental Protection Act; Section 12(b) of the Act; and Rules 403, 602(b) and 951(a) of Chapter 3 and Section 12(a) of the Act.
2. The Village of DeSoto shall pay no penalty. Clifford Hale shall pay a penalty of \$1000 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 \$1000 which is to be sent to:

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

3. Each Respondent will be bound by the terms of each respective stipulation incorporated by reference as if completely set forth herein.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted by the Board on the 24th day of January, 1980 by a vote of 4-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board