

ILLINOIS POLLUTION CONTROL BOARD
May 21, 1992

RESIDENTS OF CEDARVILLE,)	
)	
Complainant,)	
)	
v.)	PCB 91-194
)	(Enforcement)
)	
VILLAGE OF CEDARVILLE,)	
)	
Respondent.)	

ORDER OF THE BOARD (by B. Forcade):

This matter comes before the Board on a motion to dismiss filed on March 27, 1992, by the Village of Cedarville (Village). On April 23, 1992, the Board requested that the Village submit copies of the releases referenced in the complaint and explain the relevance of the releases. The Village filed copies of the releases with the Board on May 4, 1992. The Residents of Cedarville (Residents) did not file a response to the motion.

In its motion the Village argues that the Board should dismiss this case because the Village is in substantial compliance with the Board's regulations and because the Board has held that enforcement actions are inappropriate where there is substantial compliance. Specifically, the Village claims that it has operated its sanitary sewer system for 15.5 years through August 19, 1990, with violations on only three days, and notes that this record constitutes a violation rate of .05 percent and a compliance rate of 99.95 percent.

A single day or incident of non-compliance with a Board regulation constitutes a violation. In High Lake Poultry Inc. v. Pollution Control Board, (2nd Dist. 1975), 25 Ill.App.3d 956, 323 N.E.2d 612, substantial compliance was just one factor that the court weighed in determining that a penalty should not be assessed. However, despite a finding of substantial compliance the court held that High Lake violated the Environmental Protection Act. High Lake Poultry Inc. v. Pollution Control Board, supra. A claim of substantial compliance is a mitigating circumstance to be considered in determining the penalty (Ill.Rev.Stat. 1991 ch. 111 1/2, par 1042(h)) and does not prevent a finding of violation. Considering the facts of this case and the remedies sought in the complaint, a claim of substantial compliance does not present adequate grounds for dismissal.

In its response to the Board order of April 23, 1992, the Village stated that the releases may or may not be relevant to

this proceeding. The Village argues that the complaint indicates that Residents are requesting that the Board award damages. However, the Village believes that the Board does not have the authority to assess damages in an enforcement action. The Village states that the releases were referenced in the motion to address the issue of damages.

In the complaint, the residents request two forms of relief:

- (1) Order the Village to locate the problem ... and take whatever actions necessary to correct problem.
- (2) Order Village to assume full responsibility for sewage back-ups to residents' homes hooked up to Village sewer system.

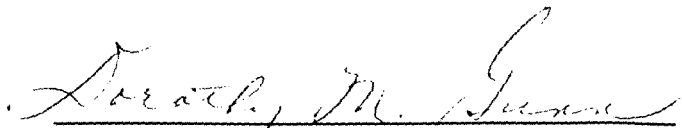
The Board does not read the Residents' complaint as asking for damages as a form of relief. While the Board does not award damages, the relief sought by the complaint is within the authority of the Board.

The releases relate to payment of damages arising from the June 29, 1990, incident. A release from damages does not prohibit the filing of a citizen complaint based on a statutory violation. The Board finds that the releases do not preclude the Residents from bringing the present action. Therefore, the Board finds that the releases are not relevant to the Village's motion to dismiss.

Therefore, the Village's motion to dismiss is denied.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, do hereby certify that the above order was adopted on the 21st day of May, 1992, by a vote of 7-0.


 Dorothy M. Gunn, Clerk
 Illinois Pollution Control Board