

ILLINOIS POLLUTION CONTROL BOARD
September 23, 1983

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) PCB 79-231
)
CITY OF ALTAMONT, a municipal)
corporation; and GERALD VAN ALST)
an individual; and GERALD VAN ALST)
JOHN VAN ALST, and RICHARD ACKERMAN,)
a partnership,)
)
Respondent.)

MR. REED NEUMAN, ATTORNEY AT LAW, APPEARED FOR THE COMPLAINANT.

MR. THOMAS F. TAYLOR OF TAYLOR AND TAYLOR, APPEARED FOR RESPONDENT GERALD VAN ALST.

MESSRS. DALE F. WOLFF AND JAMES M. EDER OF DALE F. WOLFE AND ASSOCIATES APPEARED FOR RESPONDENT CITY OF ALTAMONT.

OPINION AND ORDER OF THE BOARD (by J.D. Dumelle):

On November 6, 1979, the Environmental Protection Agency (Agency) filed a complaint against the City of Altamont (Altamont), population 1,929, and an individual, Gerald Van Alst (Van Alst). On September 30, 1980, the Agency submitted an amended complaint. Hearings were held on October 21, 1981, March 22, 1983, and July 12, 1983 in the City Hall, Altamont, Illinois. The Agency's closing brief was filed August 22, 1983.

The complaint charges that Altamont and Van Alst* caused or allowed the construction of a sewer system connecting two eight-unit apartment buildings to the City's sewer system without obtaining or applying for a construction permit from the Agency. The Agency claims this violates Section 12 of the Environmental Protection Act (Act) and old Board Rule 951(a), currently 35 Ill. Adm. Code 309.202, Water Pollution.

* The amended complaint added two new individuals, John Van Alst and Richard Ackerman. The Agency admits there is no evidence of violation against them (Closing Br., p.1).

Section 12 of the Act provides, in pertinent part:

"No person shall:

- ...
- c. Increase the quantity or strength of any discharge of contaminants into the waters, or construct or install any sewer or sewage treatment facility or any new outlet for contaminants into the waters of this State, without a permit granted by the Agency;..."

35 Ill. Adm. Code 309.202, Construction Permits, provides in pertinent part:

"Except for treatment works or wastewater sources which have or will have discharges for which NPDES Permits are required, and for which NPDES Permits have been issued by the Agency:

- a) No person shall cause or allow the construction of any new treatment works, sewer or wastewater source or cause or allow the modification of any existing treatment works, sewer or wastewater source without a construction permit issued by the Agency, except as provided in paragraph (b).
- b) Construction permits shall not be required for the following:

...

- 2) Any treatment works, sewer or wastewater source designed and intended to serve a single building and eventually treat or discharge less than an average of 1500 gallons per day (5700 l/day) of domestic sewage; or..."

FACTUAL HISTORY

In June, 1977, Van Alst initiated the construction of two eight-unit apartment buildings, known as the Parkview Heights Apartments, in the City of Altamont (R. 13). The building permits allowing construction of these buildings were approved by the Altamont Mayor and City Commissioners on October 13, 1976, and May 2, 1977 (R. 92-96). On July 27, 1977, an Agency field engineer inspected the property and observed the building construction, an open trench, and plastic sewer line either going toward or connected to the City sewer (R. 35). The Agency field engineer spoke with Van Alst and the Mayor of Altamont, informing them that a permit from the Agency was needed for this activity, no permit had been issued, and that such a permit probably could not be issued because their existing sewage facility was on restricted status (R. 36-38). On July 30, 1977, the Agency Regional Manager

wrote the Mayor and Council of Altamont, informing them that a permit was needed, none had been issued, and none could be issued while Altamont was on restricted status (Ex. B). Altamont passed an Ordinance on July 27, 1977, which prohibited an existing waste stream from a slaughterhouse (Ex. 5), and Altamont's engineering contractor wrote the Agency requesting approval of the apartments based on removal of the slaughter house (Exhibit C). On October 17, 1977, the Agency denied the request by letter to Altamont's engineering contractor with a copy to Altamont (Ex. D). In March of 1978, Van Alst obtained a permit from the City to connect to the sewers and did so before June, 1978 (R. 14,20). Beginning around July, 1978, the apartments were occupied and sewage flowed from them to the Altamont sewer system (R. 15,20).

Because of unique circumstances, the case relating to Van Alst will be discussed separately.

DISCUSSION

From the facts of this case, a violation of 35 Ill. Adm. Code 309.202 will occur if one or both of two situations occurred. The first situation is where either of the two apartment buildings was designed to discharge 1500 gallons per day or more of domestic sewage to the municipal sewage system. The second situation is where the sewer line connecting to Altamont's sewer system carries flows from more than one building. No violation would occur if each apartment building was separately connected to Altamont sewer system and each building was designed to produce less than 1500 gallons per day of domestic sewage. In particular, the following cross examination of the Agency field engineer, Larry Eastep, by the attorney for Van Alst, Mr. Taylor, shows both violation situations have occurred:

"By MR. TAYLOR:

Q. What I understand from you, Mr. Eastep, if there would have been two separate sewer lines connected, one for each of the buildings, that wouldn't have fallen within the criteria of needing a permit?

A. That still would have fallen because of the loading from each building. You see, each building would have had eight units and conceivably could hold more than 15 persons which is the other requirement which is 1500 gallons per day so each building itself could have triggered the requirement for a permit.

Q. You said "could," then maybe it might not have?

A. Well, they didn't build it that way. If they had in fact built two buildings with two connections, then there would have been two permits required.

MR. TAYLOR: I think that's all."

Also, Altamont has admitted that the effluent generated by the two buildings and passed to the Altamont sewer system was in excess of 1500 gallons per day (R. 15,20). Clearly, the connection was prohibited by 35 Ill. Adm. Code 309.202 without a permit. The Agency granted no permit (R. 37,39).

Having found the sewer connection in violation of Section 309.202, Altamont's culpability depends on whether it caused or allowed such construction. The Mayor of Altamont, during the relevant time period, testified that the buildings could not have been constructed without a building permit from Altamont, nor could they have been hooked up to the sewer system without a permit (R. 116). Altamont issued those permits (R. 14, 20), thus Altamont is in violation of 35 Ill. Adm. Code 309.202.

In mitigation, Altamont claims to have believed the buildings were to be connected to the sewer system separately, and that each would generate less than 1500 gallons per day due to the high proportion of elderly people in the buildings (R. 109-110). While this may at least partially mitigate the actions of Altamont prior to being informed by the Agency that the connections were illegal, it does not mitigate their subsequent actions. On July 27, 1977, an Agency field engineer told the Altamont mayor these sewer lines were not permitted (R. 36-38), and in a July 30, 1977, letter the Agency Regional Manager informed the Mayor and Council the activity was prohibited (Ex. B). In March of 1978, Altamont issued the permits allowing hook-up to the sewer system (R. 14,20).

In today's Order the Board finds Altamont in Violation of Section 309.202, and orders Altamont to Cease and Desist from issuing construction permits or sewer connection permits in violation of that Section. The Board fines Altamont \$1,000 for that violation.

VAN ALST, ET AL

The defendants, Gerald Van Alst, John Van Alst, and Richard Ackerman present other problems. First, the Agency admits there is no evidence against John Van Alst and Richard Ackerman. (Closing Br. p. 1). Accordingly, they are dismissed.

Concerning Gerald Van Alst, the Agency filed a Request for Relief from Automatic Stay in the U.S. Bankruptcy Court for the Southern District of Illinois (In Re: Gerald Van Alst, BK-80-30738) with a copy to the Board. That document recites that Gerald Van Alst filed a Petition in Bankruptcy on December 29, 1980, and that an automatic stay prohibits further proceedings in this enforcement case (also see R. 54-55 at which this matter

was discussed).** The Board has not received notification of any additional action on the bankruptcy petition or the Request for Relief from Automatic Stay.

Without knowing the disposition, if any, of the Attorney General's request for relief of stay in the Bankruptcy Court the Board must assume that the statutory bar to proceeding in this case continues in effect. In the interest of judicial economy, the Board dismisses Van Alst, without prejudice, with leave for the Agency to refile at some future date when the Board can proceed.

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


** Moreover, the record shows that Van Alst's attorney died during the pendency of this enforcement case and that his law partner did not inherit Van Alst as a client, has no files in the office concerning Van Alst and is otherwise unable to provide the parties or Board with information on Van Alst (R. 70-74). The partner withdrew from the case (R. 75).

ORDER

1. The Board finds the City of Altamont in violation of 35 Ill. Adm. Code 309.202.
2. The City of Altamont shall Cease and Desist from approving building permits and sewer connection permits in violation of 35 Ill. Adm. Code 309.202.
3. The City of Altamont shall pay a penalty for the violation noted, in the amount of \$1,000. Within forty-five days of the date of this Order, the City of Altamont shall pay, by certified check or money order payable to the State of Illinois, the penalty of \$1,000 which is to be sent to: Illinois Environmental Protection Agency, Fiscal Services Division, 2200 Churchill Road, Springfield, Illinois 62706.
4. John Van Alst and Richard Ackerman are hereby dismissed, with prejudice.
5. Gerald Van Alst is hereby dismissed, without prejudice.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 23rd day of September, 1983 by a vote of 5-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board