

ILLINOIS POLLUTION CONTROL BOARD
December 3, 1981

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) PCB 80-191
)
CITY OF BENTON, a municipality,)
and JAMES P. ODOM, an)
individual,)
)
Respondents.)

CHRISTINE ZEMAN, ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF THE
COMPLAINANT.

RONALD J. GIACONE, ATTORNEY AT LAW, APPEARED ON BEHALF OF RESPONDENT
CITY OF BENTON.

ELMER JENKINS, ATTORNEY AT LAW, APPEARED ON BEHALF OF RESPONDENT
JAMES P. ODOM.

OPINION AND ORDER OF THE BOARD (by N.E.Werner):

This matter comes before the Board on the October 14, 1980
Complaint brought by the Illinois Environmental Protection Agency
("Agency").

On October 23, 1980, Respondent James P. Odom ("Odom") filed a
Motion to Dismiss the Agency's Complaint and a Motion to Strike a
portion of the Complaint. On November 6, 1980, the Agency filed a
Motion for Leave to File Objection Instantly and an Objection to the
Motions to Dismiss and Strike. On November 20, 1980, the Board
entered an Order granting the Agency's motions and denying Respondent
Odom's motions.

On November 24, 1980, Respondent City of Benton (the "City")
filed a Motion to Dismiss the Complaint against the City. On
December 3, 1980, the Agency filed an Objection to the Motion to
Dismiss the Complaint against the City of Benton and a Memorandum
of Law. On December 4, 1980, the Board entered an Order denying the
City's Motion to Dismiss the Complaint.

On December 22, 1980, Respondent Odom filed an Objection to the
Hearing Officer and the Hearing Officer sent in a letter asking to
be allowed to withdraw from this case. This case was subsequently
assigned to a new Hearing Officer.

On March 9, 1981, the Agency filed a Motion to Amend the Complaint, Proposed Order, and an Amended Complaint.

Count I of the Amended Complaint alleged that, intermittently from August 1, 1976 until the filing of the Complaint (including, but not limited to, August 24, 1976, February 21, 1979, and July 24, 1980), the City allowed discharges of untreated wastewater from a broken main influent sewer line to its sewage treatment plant to directly enter the receiving stream, Sugar Creek, an Illinois water, causing the creek to contain unnatural sludge or bottom deposits, floating debris, and unnatural color or turbidity in violation of Rules 203(a) and 402 of Chapter 3: Water Pollution Control Regulations ("Chapter 3") and Section 12(a) of the Illinois Environmental Protection Act ("Act").

Count II alleged that, from August 1, 1976 until the filing of the Complaint, discharges of effluent from the City's broken sewer line to Sugar Creek contained settleable solids, floating debris, and sludge solids in violation of Rule 403 of Chapter 3 and Section 12(a) of the Act.

Count III alleged that, from August 1, 1976 until the filing of the Complaint, Respondent Odom (who owns the property on which the break in the City's sewer line occurred) refused to allow the City's employees access to the broken sewer line, thus allowing the discharge of untreated wastewater from the City's broken sewer line on Odom's property to Sugar Creek causing the creek to contain unnatural sludge, floating debris, and unnatural color or turbidity in violation of Rules 203(a) and 402 of Chapter 3 and Section 12(a) of the Act.

Count IV alleged that, intermittently from August 1, 1976 until the filing of the Complaint, Odom allowed discharges of effluent from the City's broken sewer line on Odom's property to Sugar Creek to contain settleable solids, floating debris, and sludge solids in violation of Rule 403 of Chapter 3 and Section 12(a) of the Act.

On March 17, 1981, the new Hearing Officer granted the Agency's Motion to Amend its Complaint.

On March 26, 1981, Respondent Odom filed an Answer to the Amended Complaint. On April 27, 1981, the City filed its Answer to the Amended Complaint.

A hearing was held on October 14, 1981. The parties filed a Stipulation and Proposal for Settlement on October 21, 1981.

The City of Benton, which has a population of about 7,778 people, owns and operates a sewage treatment plant (the "plant" or "facility") consisting of a trickling filter wastewater treatment system which "is located just north of Petroff Road and West of Illinois 57 in Franklin County, Illinois." (Stip. 2).

The main influent sewer line to the plant, which is owned by the City, consists of a 30" sanitary trunk sewer. (Stip. 2). It is

stipulated that, from August 1, 1976 until October 7, 1980, the main influent sewer line to the plant was broken at a point located on property just south of Petroff Road owned by Respondent Odom. (Stip. 3).

The Agency has asserted that, intermittently from August 1, 1976 until October 7, 1980, discharges of untreated wastewater from the broken sewer line entered Sugar Creek and caused the creek to contain unnatural solids, floating debris, and unnatural color or turbidity. Both Respondents have indicated that "such discharges might or could have occurred." (Stip. 3). On October 7, 1980, the leak of unnatural wastewater from the City's broken sewer line to Sugar Creek was stopped and the City completed repairing this broken sewer line on October 10, 1980. (Stip. 4). A subsequent Agency inspection on October 14, 1980 confirmed that this repair was, in fact, made. (Stip. 4).

The parties have indicated that, from August 1, 1976 until October 7, 1980, there was a dispute between the City and Respondent Odom pertaining to the issue of "whether or not the City of Benton had a right to enter upon the property of Odom by way of easement or license" and this dispute about the right of entry "hampered the city's access" onto Odom's property and delayed the repair of the broken sewer line. (Stip. 4).

Moreover, during the time period from the fall of 1976 until October 7, 1980, Respondent Odom did nothing to repair the break in the sewer line pending the completion of his sporadic negotiations with the City pertaining to property access by City employees. (Stip. 4). On August 15, 1981, the Respondents finally agreed upon the preliminary terms of an easement on Odom's property to allow access by City personnel to maintain and repair the sewer line in question. Although "several tentative agreements were reached", actual access to the broken sewer line was not approved by Odom until October of 1980. (Stip. 4).

The proposed settlement agreement provides that the Respondents admit the applicable allegations in the Complaint and agree to cease and desist from further violations and pay a stipulated penalty of \$500.00 each. (Stip. 6-7).

In evaluating this enforcement action and proposed settlement agreement, the Board has taken into consideration all the facts and circumstances in light of the specific criteria delineated in Section 33(c) of the Act. The Board finds the settlement agreement acceptable under Procedural Rule 331 and Section 33(c) of the Act.

Accordingly, the Board finds that the Respondents, the City of Benton, a municipality, and James P. Odom, an individual, have violated Rules 203(a), 402, and 403 of Chapter 3: Water Pollution Control Regulations and Sections 12(a) of the Illinois Environmental Protection Act. The Respondents will be ordered to cease and desist from further violations and pay a stipulated penalty of \$500.00 each.

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

ORDER


It is the Order of the Illinois Pollution Control Board that:

1. The Respondents, the City of Benton, a municipality, and James P. Odom, an individual, have violated Rules 203(a), 402, and 403 of Chapter 3: Water Pollution Control Regulations and Section 12(a) of the Illinois Environmental Protection Act.
2. The Respondents shall cease and desist from further violations.
3. Within 45 days of the date of this Order, the Respondents shall, by certified check or money order payable to the State of Illinois, pay the stipulated penalty of \$500.00 each which is to be sent to:

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

4. The Respondents shall comply with all the terms and conditions of the Stipulation and Proposal for Settlement filed on October 21, 1981, which is incorporated by reference as if fully set forth herein.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order were adopted on the 3rd day of December, 1981 by a vote of 5-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board