

ILLINOIS POLLUTION CONTROL BOARD
February 5, 1981

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,)
)
 Complainant,)
)
 v.) PCB 79-35
)
 CHEVY CHASE WATER AND SEWER CO.,)
)
 Respondent,)
)
 AND VILLAGE OF BUFFALO GROVE, COUNTY OF LAKE,)
)
 Additional Party Respondents.)

WILLIAM J. BLAKNEY, ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF THE COMPLAINANT,

ROBERT C. JOHNSON AND MARK J. FRIEDMAN, SONNENSCHNEIN, CARLIN, NATH AND ROSENTHAL, APPEARED ON BEHALF OF RESPONDENT, CHEVY CHASE WATER AND SEWER COMPANY,

WILLIAM G. RAYSA, BLOCHE, FRENCH & RAYSA, APPEARED ON BEHALF OF RESPONDENT, VILLAGE OF BUFFALO GROVE,

GARY NEDDENRIEP, ASSISTANT STATE'S ATTORNEY, APPEARED ON BEHALF OF INTERVENOR-RESPONDENT LAKE COUNTY.

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

This matter comes before the Board on a complaint filed February 21, 1979 by the Illinois Environmental Protection Agency (Agency) against the Chevy Chase Water and Sewer Company (Chevy Chase). Chevy Chase, initially the sole respondent, was charged with violations of the Environmental Protection Act (Act) and Chapter 3: Water Pollution, resulting from its operation of a wastewater treatment facility located in an unincorporated area of Lake County near the Villages of Buffalo Grove and Wheeling.

On November 28, 1979, the Agency and Chevy Chase filed a Stipulation of Facts and Proposal for Settlement with the Board for its approval. By its Order of February 7, 1980, the Board rejected this Stipulation, which would have required the consent and cooperation of two non-parties, the Village of Buffalo Grove (Buffalo Grove) and Lake County. By its Orders of May 15 and June 12, 1980 the Board ordered joinder of Buffalo Grove as an additional party respondent "necessary for the Board's complete determination of these proceedings."

Hearings were held in this matter on July 21-22, 1980, at which evidence concerning the offenses charged and the rejected stipulation was presented. On July 21, the Hearing Officer granted Lake County's petition for leave to intervene as a party respondent. Finally, various motions made by the parties during and subsequent to hearing will be addressed by the Board in the course of this Opinion.

The Agency's five Count Complaint charges Chevy Chase with the following violations, occurring in some or all of the months between and including October, 1977 and July, 1978:

a) discharging effluent exceeding the limitations for BOD₅, suspended solids, fecal coliform, and chlorine residual contained in its NPDES permit, in violation of Sections 12(a) and (f) of the Act, and Rule 901 of Chapter 3 (Count I),

b) discharging effluent exceeding the BOD₅ limit established by the Board for Chevy Chase in Village of Bloomingdale v. EPA, PCB 78-124, and exceeding that limit by five times on June 14, 1978, in violation of Section 12(a) of the Act and of Rule 401(c), 404(f) and 901 of Chapter 3 (Counts II, III),

c) failure to record and report data concerning certain parameters and failure to report non-complying discharges as required by its NPDES permit, in violation of Sections 12(a) and (f) of the Act and Rule 901 of Chapter 3 (Counts IV, V).

The Complaint further alleged that these violations would continue.

The Agency's proof at hearing included introduction of Chevy Chase's Discharge Monitoring Reports (DMRs) filed for the months October, 1977 to July, 1978 (Agency Ex. 2), DMR's for the months of August, 1978 to February, 1980 (Agency Ex. 3), and photographs and testimony concerning discharges resulting from a sand filter dike break in May, 1980 (Agency Ex. 1A-1W). The Board finds that admission of exhibits 1 and 3, which refer to violations after the dates alleged in the complaint, over objection was proper, in view of the Agency's allegation of the continuing nature of the offense, and as evidence of aggravation.

Chevy Chase did not challenge the information contained in the Agency's exhibits or in the testimony of its two employee witnesses, other than to question the actual design capacity of the plant (R. 84). (It did however elicit testimony from the Agency witness and its own witness that its response to the May, 1980 dike break had been prompt, and that the discharge had been reported.) The Board finds that Respondent Chevy Chase has violated the Act and Chapter 3 as alleged.

Chevy Chase, in reply, presented evidence concerning its financial status, past efforts towards compliance, and two options

whereby it could achieve compliance with the Act and the Board's rules. William Johnson Jr., vice-president and secretary-treasurer of Chevy Chase, a closely held "family" corporation, testified that Chevy Chase was founded in 1956 for the purpose of serving a small subdivision built by his uncle, and currently serves 75 single family users, 4 restaurants, a country club, and 2 office buildings. Water and sewage rates have remained the same since 1958, although a petition for rate increase was submitted to the Illinois Commerce Commission in May, 1980. Mr. Johnson stated that even if the increase were approved, Chevy Chase would operate at an annual deficit of about \$5,000. In July, 1980 the corporation, which has never paid dividends or salaries to its shareholder officers, was \$20,000 in debt, and had cash assets of \$400. Other corporate assets included only the value of its stock, and the value of the property on which stand the treatment plant and water facility (R. 267-270, 273, CC EX. 31-51).

Mr. Johnson testified that he personally first learned of compliance problems concerning Chevy Chase in 1975 or 1976. Since the filing of the complaint, Chevy Chase has attempted to improve its maintenance procedures, but has made no improvements in the facility itself other than installation of flow meters. Failure to take other steps was due "simply to a lack of money" (R. 343, 302).

The first of Chevy Chase's compliance options, which it least favors, is rehabilitation of the existing plant. The "most cost effective figure" for rehabilitation of the existing plant would be \$745,400, in the best engineering judgment of Thomas Tutein of Baxter and Woodman, Inc., who both prepared and testified concerning this estimate (R. 367-438 CC Ex. 52). Financing of this cost "would be a tremendous burden for the users to bear," said Mr. Johnson, since Chevy Chase intends to "pass on" the costs of upgrading the plant (R. 305-306).

Chevy Chase favors the option contained in the November, 1979 proposed settlement. This would involve the construction, at an estimated cost of \$179,500 (CC Ex. 53) of about 4600 feet of sewer line to carry the effluent currently treated by Chevy Chase to an existing Lake County sewer trunk serving the nearby Inverrary subdivision. This sewer line also is necessary to enable Lake County to provide service to "eight or ten" commercial properties in the County, according to Mr. Glenn Miller, the Chairman of the Lake County Board (R. 451, 452). This trunk delivers sewage to the Des Plaines River Regional Treatment Plant, sometimes called the Pekara Southeast Facility (Pekara), which has the capacity to service the area and which is owned and operated by the Lake County Department of Public Works. Under this option, the Chevy Chase treatment plant would be phased out of operation and the property on which it stands would be developed. Ownership of the existing Chevy Chase sewer system would be transferred to Lake County (R. 308-309).

Before entering into consideration of the complexities of the sewer service and consent questions, it must be noted that the existing Chevy Chase sewer system is an older sewer system. Although an evaluation of the sewer system was not part of the scope of the Baxter and Woodman, Inc. study, engineer Tutein, "on my own time" conducted an "hour or two hours" inspection and observed that it had either an infiltration or inflow problem (R. 436). The condition of the sewer system, and the financial liabilities it could impose, could in and of itself cause Lake County to refuse its consent [R. 155, Lake County Petition to Intervene ¶1(b)].

It is obvious why the consent of Lake County is necessary, since it will receive and treat the Chevy Chase sewage. Buffalo Grove becomes a necessary party because of the contents of an inter-governmental agreement between it and Lake County. A provision in the April 18, 1972 agreement whereby Lake County agreed to treat sewage generated by Buffalo Grove, states that Lake County may not accept sewage from any person located within a delineated "sphere of influence" outside Buffalo Grove's corporate limits, unless and until Buffalo Grove consents, in writing, to such acceptance [CC Ex. 2, Sec. 2(a)]. As Chevy Chase and its users are located within the "sphere," Buffalo Grove must give the necessary consent (R. 117).

Connection of the Chevy Chase service area to the Pekara facility has been contemplated since 1974, when the corporation approached Lake County to do so. Although then - Public Works Director, Robert Degan, expressed some reservations in April, 1974 (CC Ex. 27), Lake County applied to the Agency for a 75% construction grant in aid of this project.

In May, 1974, Lake County, Buffalo Grove and William Johnson, Jr.'s father, William Johnson, Sr. had reached tentative agreement, contingent on annexation of Chevy Chase and certain other Johnson property into Buffalo Grove. Lake County was offered the requested 75% financing grant in late 1975 or early 1976 (CC Ex. 26), and requested Buffalo Grove to commit to the 25% local share (CC Ex. 4). Meanwhile, the death of Mr. Johnson, Sr. caused the above agreement to fall through (CC Ex. 28). For reasons not made explicit in this record, Lake County rejected the grant. This grant application has continued to appear on Agency grant priority lists, and in 1980 had the high priority number of 172. Lake County could still "reactivate" its application, and receive construction funds, according to Lake County Public Works Director Martin Galantha (R. 121-129, CC Ex. 1). Director Galantha also noted that Buffalo Grove, under the terms of the agreement presumably relating to the incorporated areas, would possibly "end up as the agency owning and operating" the existing Chevy Chase sewer system (R. 136).

Buffalo Grove has continued to deny its consent to the hook-on of Chevy Chase to the Pekara treatment plant, unless the Johnson family agrees to annex to Buffalo Grove certain other property,

referred to simply as "the Johnson property." Annexation of this "Johnson property," which would be suitable for development as an industrial park, and which lies between Buffalo Grove and the Chevy Chase service area, has been the subject of competition between Buffalo Grove and the Village of Wheeling (Wheeling). This competition is germane to the resolution of this case, by reason of actions Wheeling has taken in regard to sewer service for this area during the course of annexation negotiations with the Johnsons. Wheeling petitioned the Metropolitan Sanitary District of Greater Chicago (MSD) to enter into an agreement to provide "extra-territorial" service to the "Johnson property" in Lake County, in the event of its annexation to Wheeling. The prospect of the eventual annexation of and sewer service for Chevy Chase was mentioned in the petition, but was not made part of Wheeling's formal request to MSD (Buffalo Grove Ex. 2, Letter of Wheeling to MSD 12-12-79, Wheeling Statement 5-22-80).

Both Buffalo Grove and Lake County objected to this petition (BG Ex. 17, LC Ex. 1). The Board takes official notice of the minutes of the meetings of the MSD Committee on Engineering held January 29, 1980 and May 22, 1980. At the latter meeting, authority to enter into negotiations for a sewer service agreement between the MSD and Wheeling was approved (See also BG Ex. 2).*

On July 23, 1980 Chevy Chase moved the Board for entry of an Order to compel Buffalo Grove to consent to connection of its customers to the Lake County Pekara facility. This motion is denied. Based on this record, the Board declines to exercise at this time any jurisdiction it may have to issue the requested Order. Even were the Board to compel Buffalo Grove to consent, Lake County has clearly reserved its right to refuse to accept ownership of the Chevy Chase sewer system, as it would with any system, if it does not meet its standards.

Much of the information here presented has related to the economic reasonableness component of Section 33(c)(4) of the Act, and whether plant rehabilitation is more cost effective than other service alternatives. Yet it is noteworthy that the Johnson's (and therefore Chevy Chase's) negotiations with Lake County and with Wheeling/MSD have barely touched on all relevant factors, including the economics relative to the existing sewer system. Accordingly

*The November 12, 1980 Chevy Chase Motion to Strike portions of the Village's closing brief is granted in part and denied in part. The Hearing Officer's refusal to admit Buffalo Grove Ex. 1 was not clearly erroneous, and the Board affirms it: references to that exhibit are therefore stricken. As no timely objection to Buffalo Grove Ex. 2 was made, and as the Board may take official notice of public records such as the MSD meeting minutes at issue, the motion to strike references to these matters is denied.

the Board cannot exercise an informed discretion based on the evidence here presented.*

Chevy Chase has created the long term pollution problem here complained of, and therefore has the clear duty to abate it. The record indicates that the connection to the Pekara plant is agreed by all parties as being the least costly option. Since the abatement of the pollution as quickly as possible is the Board's overriding concern, the Board must determine whether voluntary agreement on this option is possible before considering and ordering other alternative approaches. Chevy Chase is ordered to commission a sewer survey that includes the estimated cost of eliminating any infiltration or inflow into its sewers beyond the obvious inflow abatement steps contained in this Order. In addition, Chevy Chase is to proceed to upgrade the sewers and plant as outlined in the attached Order, which incorporates corrective measures suggested in the parties' proposed stipulation.

Although a fine is warranted here as a necessary aid to enforcement of the Act, in light of Chevy Chase's poor financial condition and its certain need to make significant expenditures in pursuit of compliance, the Board assesses a fine of \$500.

The Board will retain jurisdiction in this matter.

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

ORDER

1. Respondent, Chevy Chase Water and Sewer Company, is hereby found to have violated Rules 401(c), 404(f) and 901 of Chapter 3: Water Pollution and Sections 12(a) and (f) of the Environmental Protection Act.

2. Chevy Chase Water and Sewer Company shall commission a sewer survey which shall include the estimated costs of sewer rehabilitation and elimination of infiltration and inflow not corrected pursuant to paragraph 5 of this Order. The results of this survey shall be completed and presented to Lake County and the Village of Buffalo Grove within 90 days of the date of this Order.

3. Chevy Chase shall promptly renew its petition to the Village of Buffalo Grove for its consent to the hook-on of Chevy Chase customers to the Des Plaines River Regional Treatment Plant. Within 120 days of the date of this Order, Respondent shall advise

*The request of Chevy Chase for a variance, in the alternative, in its October 6, 1980 argument cannot be considered unless submitted in conformance with the Act and Board Procedural Rules. Also, its October 6, 1980 request for oral argument is denied in light of the need to further develop the record.

the Board in writing as to the result of any formal action on the matter made by the Village's Board of Trustees. For the purpose of this proceeding only, lack of affirmative action by the Village's Board of Trustees will be deemed denial of its consent.

4. Within 120 days of the date of this Order, Respondent shall advise the Board in writing as to the result of any formal action taken by Lake County on the following matters: a) Lake County's willingness to accept, with any agreed conditions, ownership of Respondent's sewer system, b) Lake County's reapplication for a federal or state grant to finance 75% of the cost of constructing the necessary 4600 foot sewer line, and c) Lake County's plans regarding construction of this line after grant funds are obtained. For the purposes of this proceeding only, lack of affirmative action by Lake County will be deemed denial of its consent to these undertakings.

5. Within 60 days of the date of this Order, Chevy Chase shall comply with the interim operating procedures and standards set forth below and shall:

(a) Thoroughly clean sand filter after having obtained a core sample to determine the depth of solids penetration therein.

(b) Thoroughly clean the dosing tank and thereafter provide regular and proper maintenance for the tank.

(c) Obtain the design data of the plant equipment (Imhoff tank, dosing tank, pump, dual sand filter, etc.) for use in the operation and maintenance of the sewage treatment plant.

(d) Install facilities for the periodic chlorination of the sand filter inlet.

(e) Locate and correct any obvious sources of inflow, such as downspouts, low manholes, storm drains to the sanitary sewer, etc.

(f) Demand effective grease removal facilities to be installed by restaurants served by the treatment plant.

(g) Hire a properly certified operator to direct and supervise the operation of the plant. Such operator shall be hired for such periods of time as are necessary to operate the plant as efficiently as practicable.

(h) Install proper flow measuring facilities.

(i) Install necessary facilities so that a sample of the effluent can be obtained at the point after the final treatment process and before discharge to or mixing with the receiving waters.

(j) Cause to be performed regular and proper maintenance of the plant facilities and grounds.

(k) Cause to be performed regular and proper maintenance of the Imhoff tank, including but not limited to, periodic sludge level measurement, skimming, and squeegee cleaning of the sloping walls of the settling compartment.

(l) Develop an operating procedures manual, a copy of which is to be forwarded to the Agency.

(m) Inform the Agency in writing within 14 days of any delay caused by inclement weather, but prompt compliance must be resumed as the weather permits. Respondent shall also notify the Agency within 14 days of the completion of the procedures required in Paragraph 4 of this Order.

6. Within 90 days of the date of this Order Chevy Chase Water and Sewer, Co. shall, by certified check or money order payable to the State of Illinois, pay a penalty of \$500 which is to be sent to:

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

7. Respondent Chevy Chase's Motion to Compel of July 23, 1980 is hereby denied.


8. Respondent Chevy Chase's Motion to Strike of November 12, 1980 is granted in part and denied in part.

9. Respondent Village of Buffalo Grove's July 23, 1980 Motion to Dismiss is denied.

10. The Board will retain jurisdiction in this matter.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order were adopted by the Board on the 19th day of February, 1981 by a vote of 5-0.


Christan L. Moffett, Clerk
Illinois Pollution Control Board