

ILLINOIS POLLUTION CONTROL BOARD
December 20, 1977

ENVIRONMENTAL PROTECTION AGENCY,)
)
 Complainant,)
)
 v.) PCB 77-123
)
 PAUL STARCHEVICH, JR., MILDRED L.)
 STARCHEVICH, FOUR NINE FOUR)
 CORPORATION, a Missouri Corporation,)
 and PAUL'S IGA FOOD-LINER, INC., an)
 Illinois Corporation,)
)
 Respondents.)

- and -

ENVIRONMENTAL PROTECTION AGENCY,)
)
 Complainant,)
)
 v.) PCB 77-148
) CONSOLIDATED
)
 PAUL STARCHEVICH, JR., MILDRED L.)
 STARCHEVICH and ELEANOR LEEPER,)
)
 Respondents.)

JOHN VAN VRANKEN, ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF
COMPLAINANT;
GARY E. BARNHART OF CLAUDON, ELSON, LLOYD & BARNHART, LTD., APPEARED
ON BEHALF OF RESPONDENTS PAUL STARCHEVICH JR., MILDRED L.
STARCHEVICH, ELEANOR LEEPER, AND PAUL'S IGA FOOD-LINER, INC.;
RONALD WEBER OF FROEHLING, TAYLOR & WEBER APPEARED ON BEHALF OF
RESPONDENT FOUR NINE FOUR CORPORATION.

OPINION AND ORDER OF THE BOARD (by Mr. Goodman):

This matter comes before the Board upon two Complaints filed
by the Environmental Protection Agency (Agency). PCB 77-123,
filed May 2, 1977, charges Paul Starchevich, Jr., Mildred L.
Starchevich and Four Nine Four Corporation (Four Nine Four) with

violations of Rules 951(b), 952(a), 953(a) of Chapter 3: Water Pollution and Section 11(b) of the Environmental Protection Act (Act). The Complaint was amended on August 9, 1977 to add Paul's IGA Food-liner, Incorporated (Paul's, Inc.) as Party Respondent. PCB 77-148, filed June 2, 1977, charges Paul Starchevich, Jr., Mildred L. Starchevich and Eleanor Leeper with the same violations of Chapter 3 and the Act. A hearing was held on September 1, 1977.

At the hearing, a motion which was brought by the Agency to consolidate these actions was granted by the Hearing Officer (R.5 & 6). Under Procedural Rule 309, only the Board has authority to consolidate adjudicative claims. Therefore, at this time the Board grants the motion and consolidates PCB 77-123 and PCB 77-148 for decision. Respondents Starchevich, Leeper, and Paul's Inc., motion to dismiss is hereby denied (R.74).

A request for Admission of Facts was made of Mr. and Mrs. Starchevich and Four Nine Four, as Respondents in PCB 77-123, on June 1, 1977. Four Nine Four failed to file a response with the Board. Pursuant to Procedural Rule 314(c), each of the matters of fact raised in the request to Four Nine Four (See, Ex. 2) are taken as admitted.

In 1973, a retail grocery store located in Farmington, Fulton County, Illinois was constructed and subsequently owned and operated by Paul's, Inc. Sewer service was provided by construction of an 8-inch line connected to the Farmington sewer system. Agency permits were not required for construction or operation of this sewer line because of the Rule 951(b)(2) exemption. The Farmington sewer system and STP were on restricted status at this time. Ownership of the building, surrounding land, and the sewer line passed to Mr. and Mrs. Starchevich on or about December 19, 1976 and Paul's, Inc. was dissolved on or about January 18, 1977.

Two additional connections were made to the 8-inch line: a Ben Franklin store owned by Four Nine Four on July 22, 1977 and the Shad Hill marketplace owned by Leeper on or about March 18, 1977. No Agency Construction or Operating Permits were received for these connections. In fact, no permit application was even made until May 24, 1977 (R.EPA). Paul's, Inc. was paid \$1,000 for the Ben Franklin connection (R.14, 93), and Paul Starchevich was paid \$1,000 for the Shad Hill connection (R.15). The existence of these connections is established beyond doubt from the testimony of Paul Starchevich (R.13, 15, 87), Eleanor Leeper (R.21) and Agency inspector Lyle A. Ray (R.28-9, 71) and the unanswered Request for Admissions.

All Respondents were aware before the fact that these connections to the the 8-inch sewer line would require agency permits. Four Nine Four and Leeper received such notification by mail in May, 1976 (See Ex. 4 and 5), and Paul Starchevich was notified verbally by Ray at the time of the Ben Franklin connection (R.31-33, 51). Following notification to Paul Starchevich, the Ben Franklin line was disconnected but was reconnected approximately one week later at the request of Four Nine Four (R.92-3).

The evidence presented at the hearing is sufficient to find violations of Rules 951(a) and 952(a) of Chapter 3. The contention by Respondents that the additional connections fall under the Rule 951(b)(2) exemption is wholly unfounded. Once those connections were made, the 8-inch line became a sewer extension rather than a service connection and the exemption no longer applied. Respondents therefore "caused or allowed" the construction and operation of a sewer requiring a permit without the requisite permit, in violation of Rules 951(a) and 952(a).

A violation of Rule 953(a) of Chapter 3 was not shown in the record. The buildings involved here are neither treatment works, pretreatment works or wastewater sources as defined in Rule 104.

In regard to the Ben Franklin connection, the Board finds the following violations of Chapter 3 and the Act. Paul's, Inc. is in violation of Rules 951(a), on July 22, 1976, 952(a) from July 22, 1976 until December 18, 1976 and thereby Section 12(b). Four Nine Four is in violation of Rules 951(a) on July 22, 1976 and 952(a) from July 22, 1976 until August 9, 1977 and thereby Section 12(b). Paul Starchevich and Mildred L. Starchevich are in violation of Rule 952(a) and Section 12(b) from December 18, 1976 until August 9, 1977. In regard to the Shad Hill connection, the Board finds Paul Starchevich, Jr., Mildred L. Starchevich and Eleanor Leeper in violation of Rules 951(a), on or about March 18, 1977, 952(a) from on or about March 18, 1977 until June 2, 1977 and thereby Section 12(b).

The Board has considered the Section 33(c) factors in assessing a penalty for these violations. Respondents have the burden of producing evidence concerning these factors. Processing and Books, Inc. v. Pollution Control Board, 64 Ill. 2d 68, 351 N.E. 2d 865 (1976). The character and degree of injury consists primarily of damage to the integrity of a restricted status and the need for a viable permit system. In addition, a citizen witness testified that the area of the city surrounding the connection of the 8-inch line into the city sewer system has experienced an overflow problem. The businesses have social and economic value as a source of income and employment. The suitability of the three buildings to their location was clearly established.

The fourth factor, technical feasibility and economic reasonableness, was discussed in greater detail. One engineer testified that there was no difference in environmental impact between separate service connections with city sewers and connecting into the existing 8-inch line (R.127-8). Mrs. Leeper presented evidence of great difficulty in building a direct service connection (R.107-111). Finally, imposition of a cease and desist order would hamper operations at the Ben Franklin store and the Shad Hill marketplace. The weight of this evidence, however, is greatly diminished by the fact that any hardship is self-imposed due to the Respondent's failure to avail themselves of Board variance proceedings, of which they were aware (See Ex. 4 and 5). In addition, the City of Farmington was placed on restricted status several years before construction on the Ben Franklin and Shad Hill facilities was begun.

Based on these factors, the Board imposes a penalty of \$1,000 against Paul's, Inc., \$1,000 against Paul Starchevich, Jr. and Mildred L. Starchevich who are jointly and severally liable for its payment, \$750 against Four Nine Four and \$500 against Eleanor Leeper.

The Board orders the Respondents to cease and desist all violations of the permit requirements within 180 days. All necessary Agency permits must be obtained within that time period.

This Opinion and Order constitute the findings of fact and conclusions of law of the Board.

ORDER

It is the Order of the Pollution Control Board that:

1. Paul Starchevich, Jr., Mildred L. Starchevich, Eleanor Leeper, Four Nine Four Corporation and Paul's IGA Food-liner, Inc. are in violation of Rules 951(a) and 952(a) of Chapter 3 and thereby Section 12(b) of the Act.

2. The above Respondents shall cease and desist from all aforementioned violations of the Act and Regulations within 180 days of the date of this Order.

3. For the above violations, a penalty in the amounts listed below shall be paid:


Paul Starchevich, Jr. and Mildred L. Starchevich, jointly and severally liable	\$1,000.00
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Eleanor Leeper	500.00
Four Nine Four, Corporation	750.00
Paul's IGA Food-liner, Incorporated	1,000.00

Payment shall be made within 45 days of the date of this Order by certified check or money order to

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

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 20th day of December, 1977 by a vote of 5-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board