ILLINOIS POLLUTION CONTROL BOARD
November 10,1976

ENVIRONMENTAL PROTECTION AGENCY,	)	
	)	
Complainant,	)	
	)	
	)	
	)	
v.	)	PCB 75-219
	)	
	)	
EGON K. KAMARSAY, an individual, and	)	
UNION HILL HOMEOWNERS ASSOCIATION,	)	
a not-for-profit corporation,	)	
	)	
Respondents.	)	

Ms. Marilyn B. Resch, Assistant Attorney General, appeared for the Complainant;
Mr. James W. Morris, appeared for Respondent Kamarasy;
Mr. J.C. Feirich, appeared for Respondent Union Hill Homeowner's Association.

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

The original complaint in this matter was filed by the Environmental Protection Agency (Agency) on May 28, 1975 against Respondent Egon Kamarasy. On motion of Respondent Kamarasy this Board, on August 7, 1975, ordered the Union Hill Homeowners Association (Union Hill) joined as a third-party respondent in this matter in order to facilitate a complete determination of the controversy and to avoid a multiplicity of actions arising from the same facts. On October 23, 1975 a hearing was held in the Jackson County Courthouse, in Murphysboro, Illinois at which Union Hill specially appeared for the purpose of contesting jurisdiction. Contrary to the Board's August 7, 1975 Order, Union Hill had not been properly joined as a party respondent by proper service of process. So finding, the Board, on March 25, 1976 again ordered Union Hill joined as a party respondent. The Board there confirmed its prior finding that Union Hill was necessary for the complete adjudication of this cause and that its presence as a party respondent was necessary for the proper protection of the environment.

On May 3, 1976, Assistant Attorney General Reiland filed the Agency's Amended Complaint which added Union Hill as a party respondent in this cause. However, the Amended Complaint did not charge Union Hill with any violation of the Act or Board Regulations, nor did it seek any relief against Union Hill. On May 17, 1976 Respondent Kamarasy filed a Motion to Compel Agency to Comply with Interim Order of the Board, alleging that Complainant's failure to seek relief against Respondent Union

Hill was in violation of the Board's March 26, 1976 and August 7, 1975 Interim Orders. The Board must deny this motion because it cannot compel a Complainant to prosecute a Respondent. The issue of whether this failure to prosecute is a violation of Section 31 of the Act is not properly before the Board.

A second hearing was held pursuant to the Board's March 25, 1976 Interim Order. The obvious purpose for this hearing was to provide the Board with all facts necessary to completely resolve the issues in this cause and fashion a remedy which will be effective in protecting Rocky Branch Creek and Cedar Lake Reservoir from the alleged pollution.At the May 20, 1976 hearing Union Hill stated that no proper issue in this matter concerned Union Hill (R. 128) While Respondent Union Hill admits every allegation contained in the Amended Complaint, Respondent Kamarasy denies the alleged violations (R. 133). The hearing closed with no additional evidence concerning who, in fact, is the owner of the subject sewage treatment facility.

THE MERITS OF THE CASE

With the procedural background already given, the Board will next discuss the merits of this case.

The Amended Complaint alleges that Respondent Kamarasy owns and/or operates a sewage treatment lagoon which serves a portion of the Community of Union Hills Subdivision and treats only domestic wastes. The lagoon is known as Lake Lilac. (The original Complaint alleged that Respondent Kamarasy was the owner.) The effluent from this lagoon is discharged into Cedar Lake Reservoir via Rocky Branch Creek. The Complaint further alleges that effluent from this lagoon violated Rules 404(a), 405, and 1201 of the Board's Water Pollution Regulations and Section 12(a) of the Act. These alleged violations relate to suspended solids, fecal coliforms, and operation without a certified operator, respectively. The record contains no substantial debate concerning whether the above-stated regulations were violated. Based upon the testimony and exhibits in this case the Board finds that the violations occurred. The real issue is as to who shall be liable for these violations.

The record contains sufficient evidence to establish that Respondent Kamarasy is an owner of the sewage treatment lagoon. He constructed and paid for the lagoon and obtained permits for the construction of additional lagoons. Mr. Kamarasy owns part of the land upon which the lagoon is located (R. 56, 57). He did sign a permit application as "owner" (R. 60). However, Mr. Kamarasy stated at the October 23 hearing that although he had begun construction, after obtaining permits, of additional

lagoons to improve treatment of the sewage, he nevertheless had no responsibility to do so and had therefore discontinued work on the system (R. 67).

From all of these facts it is evident that Respondent Kamarasy had exercised such control over the lagoon as is normally incident to ownership. The record also supports the allegation that he is in fact the operator of this treatment system. The Board finds that Respondent Kamarasy is an owner and operator of the subject sewage treatment lagoon. That lagoon has been found above to be in violation of various Board Regulations and the Act. There is no doubt that Mr. Kamarasy has caused or allowed those violations to occur whether as owner or operator or both.

Respondent Kamarasy's desire to deny any legal duty to operate the lagoon will not absolve him from liability in this case. Even if done under no legal obligation and out of purely humanitarian motives, the owner or operator of a sewage treatment facility must not cause or allow violations of Board Regulations or the Act. However, the question of ownership and duty must be considered in the fashioning of a just and reasonable remedy.

The issue of the ownership of the lagoon is not resolved in the record, nor is the Board empowered to find against a Respondent when no prosecution has been undertaken. Therefore, this Order must be limited to Respondent Kamarasy. However, the very reason for Ordering Union Hill joined as a Respondent was to completely resolve these issues. Union Hill has not seen fit to aid the resolution of the issue; nor has the Agency. For this reason it has been very difficult to fashion a remedy in this cause. There is testimony regarding the efforts of Mr. Kamarasy to construct a new treatment system (R. 65). This system, which serves about 30 homes (R. 55) will, in the opinion of the Agency's Regional Supervisor of Field Operations, meet the requirements of Board Regulations and the Act upon its completion (R. 50).

The record contains no factual reason why Mr. Kamarasy had not been able to complete construction by the time of the hearing on May 20, 1976. The Board has found that Mr. Kamarasy is the owner and operator of the present inadequate treatment facility. The Board cannot determine the validity of any alleged contractual obligations which Mr. Kamarasy may have to the residents of Union Hill. Neither can the Board absolve the individual homeowners hooked up to Mr. Kamarasy's lagoon from responsibility for any pollution caused. Those homeowners are not parties to this Complaint. The issues of contract law and third party liabilities belong in the Courts.

However, the Board does have the authority to order the owner and operator of a pollution source to cease and desist from violations of the Act. Such an order will have a relatively little

economic impact upon Mr. Kamarasy considering the potential of polluting Cedar Lake, which is a reservoir and public water supply for the City of Carbondale (R. 16). The cost of completing the new sand filter system is estimated at $5,000.00 (R. 66,51) and the project would take less than two weeks (R. 51,66).

There is no doubt that Mr. Kamarasy could have completed the project by or shortly after the October 23, 1975 hearing. However, he chose to stop work because of the issues of responsibility for finishing the system (R. 67). The Board is unable to find that delay to have been in bad faith. There is insufficient information in the Record for the Board to find otherwise.

Considering the factors stated in Section 33(c) of the Act, the Board finds the character and degree of the injury to the environment to substantially outweigh the value and suitability factors regarding the instant treatment system. The completion of the new system is both technologically practicable and economically reasonable. However, the Board does find that under the particular facts of this case a substantial penalty is not warranted. A penalty of $500.00 should be sufficient, in conjunction with the cease and desist order, to aid in the enforcement of the Act. The Board finds that 45 days from the date of this Order is ample time for Respondent to have the new treatment system completed and operational.

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

Mr. Young and Dr. Satchell abstained.

ORDER

1. Respondent Egon Kamarasy is hereby found to have violated Rules 404(a), 505, and 1201 of the Board's Water Pollution Regulations and Section 12(a) of the Act.

2. Respondent Egon K. Kamarasy shall cease and desist the aforesaid violations within 45 days of the date of this Order.

3. Respondent Egon K. Kamarasy shall pay as a penalty for the aforesaid violations the sum of $500.00 to the State of Illinois. Payment shall be made by certified check or money order within 35 days of the date of this Order to:

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

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 10th day of November, 1976 by a vote of 3-0.

Christan L. Moffett, Clerk
Illinois Pollution Control Board