

ILLINOIS POLLUTION CONTROL BOARD
July 10, 1975

ENVIRONMENTAL PROTECTION AGENCY,)
)
Complainant,)
)
v.) PCB 74-421
)
TOWNSHIP PUBLIC UTILITY)
CORPORATION, and Illinois)
Corporation,)
)
Respondent.)

Mary C. Schlott, Assistant Attorney General, appeared for the Complainant;
Mr. Anthony Arena, Pro Se, for the Respondent;
Mr. Glenn E. Nelson, for the Willowbrook Utility Company.

OPINION AND ORDER OF THE Board (By Mr. Zeitlin):

This matter comes before the Pollution Control Board (Board) on a Complaint filed November 15, 1974, by the Environmental Protection Agency (Agency) against Respondent Township Public Utility Corporation (Township). A hearing was held in the matter on February 21, 1975, at Joliet, Illinois. In addition to the Agency and Township, the Willowbrook Utility Co. (Willowbrook) was represented by counsel, claiming an interest in the case as a prospective purchaser of the assets of Respondent Township.

Township, an Illinois corporation, operates an activated sludge sewage treatment plant located near the city of Crete, Illinois, serving the Dixie Dells subdivision in northeastern Will County, Illinois. Township services 157 homes in this subdivision (R. 105). Flow enters the plant from the west through a concrete manhole; after passing through a grit chamber, the flow is designed to enter an aeration tank for the activated sludge process.

Following the sludge process, effluent from the digester enters one of two polishing ponds, each 30 feet by 60 feet. The final effluent from the treatment plant is discharged into Plum Creek, a tributary of the Little Calumet River. Both Plum Creek and the Little Calumet River are "waters of the state," as defined under the Environmental Protection Act (Act), and the Board's Rules and Regulations. Ill. Rev. Stat., Ch. 111 1/2, Sec. 1001, et seq. (1973). PCB Regs., Ch. 3, Rule 104.

The Agency alleges a considerable number of violations by Township, under both the Act and the Board's Water Pollution Regulations. The Agency claims that Township either fails wholly to treat the human wastes entering the plant, or when in fact attempting treatment does so in an entirely inadequate manner. The following table sets out briefly the violations alleged:

<u>VIOLATIONS ALLEGED</u>	<u>DATES ALLEGED</u>
Sec. 12(a), Act (discharge of untreated human wastes)....	Oct. 17, 1972 to Nov. 15, 1974
Ch. 3, Rule 403 (effluent containing settleable solids, floating debris, scum, sludge solids, and obvious color, odor, and turbidity levels), and also Sec. 12(a) of the Act.....	Oct. 17, 1972 to Nov. 15, 1974, including Oct. 17, 1972; Oct. 10, 1973 and March 25, 1974.
Ch. 3, Rule 203(a) causing waters of the state to contain unnatural sludge, bottom deposits, floating debris, and unnatural odor and color), and also Sec. 12(a) of the Act.....	Oct. 17, 1972 Oct. 5, 1973 and Oct. 10, 1973
Ch. 3, Rule 404(f) (BOD, SS), and also Sec. 12(a) of the Act....	Oct. 17, 1972, Oct. 10, 1973, Mar. 25, 1974, July 30, 1974
Ch. 3, Rule 405 (fecal coliform), and also Sec. 12(a) of the Act.....	Oct. 17, 1972, Oct. 10, 1973, Mar. 25, 1974, July 30, 1974

Ch. 3, Rule 1201 (certified operator), and also Sec. 12 (a) of the Act..... July 1, 1970 to Nov. 15, 1974

Ch. 3, Rule 903(a), (operating permit), and also Sec. 12(b) of the Act..... June 30, 1974 to Nov. 15, 1974

At the February 21, 1975, hearing the Agency introduced testimony and evidence which unquestionably proves all of the violations alleged. The attorney for the Agency first introduced considerable testimony establishing the validity of tests run by the Agency on Township's effluent, and on the receiving stream. In light of that testimony, the introduction of the results of those tests provides conclusive evidence that the violations alleged did in fact occur. (eg., R. 15, 16, 7-11, 30, 35, 39, 41-47, 48, 50, 51, 64, 66-70, 72, 76-77.)

In addition, the Agency brought testimony from a marine biologist, along with corroborating exhibits, indicating that the receiving stream for Township's treatment plant is in a degraded condition (R. 80-87). It is evident from the testimony and exhibits presented that this degraded condition is the result of improper operation by Township's plant.

The Agency's case makes plain the fact that Township's plant was negligently and improperly operated (eg., R. 42, EPA Exhibit 11). It is also plain that although Township's plant was not designed to meet effluent standards of 4 milligrams per liter of BOD and 5 milligrams per liter of SS, (the applicable Board criteria under Chapter Three: Water Pollution), it could much more closely approximate those standards if it were properly run. The record is replete with testimony showing that the plant either bypasses treatment directly, or performs treatment in a haphazard manner (R. 51).

At the conclusion of the Agency's presentation, Mr. Arena, President of Township since 1968 (R. 103), was called as an adverse witness and admitted essentially all of the violations alleged by the Agency. He admitted that the plant does not employ a licensed operator (R. 104), and that the proper operational reports have not been kept by Township (R. 105). Mr. Arena also stated that after plant

breakdowns, sewage was allowed to flow directly into the polishing ponds, with the result that those ponds became polluted; as a further result, once the plant began to operate again, the effluent that left the treatment plant would go into the polluted polishing ponds, and then enter the receiving stream in a condition worse than when it had completed the sludge process (R. 109). Mr. Arena admitted that the plant has been improperly operated (R. 112). Mr. Arena bluntly admitted that Township's sewage treatment plant is polluting (R.113).

The Board finds, based on this testimony and the exhibits entered at the hearing, that Township did in fact discharge untreated human wastes into Plum Creek. Further, Township discharged an effluent containing settleable solids, floating debris, scum, sludge solids, and obvious odor, color, and turbidity. Township caused its receiving stream, Plum Creek, to be polluted within the meaning of the Environmental Protection Act, in that it did contain - and does contain - unnatural sludge, bottom deposits, floating debris, and an unnatural odor and color. The effluent from Township's plant clearly exceeded the Board's limits on BOD, SS, and fecal coliform (eg., Ex. 11, 2(a)-2(f), 9, 10).

In mitigation, Township offers only a financial inability to expand or improve upon its treatment plant. Mr. Arena testified that he was turned down by the Small Business Administration, and that he was unsuccessful in an attempt to obtain funds from one Bill Miller and a nearby Holiday Inn (R. 113). Mr. Arena stated that at one point, in 1974, another Township stockholder offered to take over the entire treatment plant operation as sole owner; this deal, unfortunately, also fell through (R. 114). It even appears that the corporation President, Mr. Arena, never received his full salary (R. 104), and that he personally assisted the part-time treatment plant operator in making necessary repairs and maintenance (R. 110).

The substance of Mr. Arena's testimony, which constituted all of Township's defense in this matter, is that the problem is recognized, but without money a solution is not imminent.

Although not a part of the record, it appears from the brief of Willowbrook that Township has also failed in its attempt to generate greater income through a rate increase. Willowbrook's brief states, at p. 3, that the Illinois Commerce Commission denied Township a rate increase applied for

on February 8, 1974, in a decision rendered December 26, 1974. (It should be noted, that the Board can take official notice of such I.C.C. proceedings). I.C.C. Docket No. 58855, Dec. 26, 1974.

Despite Township's plea of poverty, it is apparent that the situation at Township's plant could be improved without the expenditure of large sums. Voluminous testimony was introduced by the Agency indicating very poor maintenance at the plant. (Although we shall discuss considerations required under Section 33(c) of the Act later, it should be noted now that such maintenance difficulties are one reason for requiring the presence of an Agency licensed treatment plant operator in this type of situation). The Agency estimated, at p. 13 of its brief, that although Township cannot meet the 4/5 BOD and SS standards, a facility of this type should be able to achieve a level of 30 mg/l BOD and 30 mg/l suspended solids. (See also, R. 126.) These levels would be in sharp contrast with samples introduced at the hearing indicating an effluent containing up to 140 mg/l BOD and 75 mg/l SS. The Agency also contends that proper operation and maintenance would virtually eliminate the problems of by-passing and polishing pond contamination which currently exist.

In a proposed order submitted with its final arguments, the Agency suggests that the Board require Township to perform such maintenance and operational changes as are presently technically and financially possible, in an attempt to bring its treatment plant closer to compliance with the Act and the Board's Rules and Regulations. The Agency would further have us require that Respondent develop a long-term plan for compliance, within 60 days, to include the construction of facilities capable of meeting the effluent requirements of the Act and the Board's Regulations. Further, the Agency feels that these requirements, as well as any penalty which the Board may impose in this matter, should be made binding on any successor in interest to Township. The Agency brief points out that Willowbrook is in fact contemplating the purchase of Township's assets.

Willowbrook, which participated at the hearing, does not deny that it is contemplating such a purchase. However, in a brief submitted pursuant to leave granted by the Hearing Officer, Willowbrook points out that this prospective purchase is conditioned upon several factors not within its control, or that of any of the parties. Willowbrook flatly states that it would have no interest in acquiring Township or its assets were that the total extent of the transaction. Instead,

Willowbrook states that its offer to purchase Township's assets is conditional upon approval by the I.C.C. of its Petition to also service a new subdivision being developed adjacent to Township's service area.

Conditioned upon the actual acquisition of Township's assets, Willowbrook has also proposed a compliance plan to alleviate the present problems of Township. That plan, would provide for ultimate compliance through the construction of a new treatment facility. For the interim, Willowbrook has proposed a reasonably comprehensive plan of action which would apparently approach compliance as closely as is feasible with the present plant. Willowbrook does, however, ask for 90 days following any acquisition of Township's assets to submit a final, long-term compliance plan, and for a further 18 months from that time to actually achieve compliance.

Regardless of the timing involved, it is apparent to the Board that acquisition of Township's assets by Willowbrook would provide the most expeditious solution to the admittedly serious problem now existing. It is apparent that Township itself cannot achieve compliance, so that if compliance is to actually be achieved, it must result from the efforts of some outside agency such as Willowbrook. The Board is troubled, however, by the conditional nature of Willowbrook's proffered compliance plan.

There is no question, of course, that the Board can enter a final order conditional upon further future events. Nor, of course, would there be any difficulty with our retaining jurisdiction to deal with possible future difficulties arising out of this situation.

For these reasons, we shall in this case enter an Order requiring immediate short-term compliance by Respondent Township, but providing alternative long-term compliance requirements, due to the contingent nature of Willowbrook's commitment to purchase. In arriving at the timetables for long-term compliance we have taken note of the fact that there may be some delay in the Illinois Commerce Commission's decision relating to this matter.

We shall require Respondent Township to immediately undertake certain steps designed to achieve the maximum practical compliance in the shortest possible time. This

will include the employment of an Agency certified treatment plant operator, which may alleviate some of the glaring problems presently occurring with maintenance and operation of the plant. We shall also order Township to immediately undertake steps to prevent the bypassing of raw sewage directly into the receiving stream. Based on the evidence discussed above to the effect that the polishing ponds are presently a major source of contamination, Township shall take all necessary steps to insure that the polishing ponds be cleaned and maintained to eliminate the present septic condition in those ponds. These latter requirements must be given the first priority, in order to eliminate the grossest of the violations which we have found here. If necessary and feasible, the polishing ponds should be bypassed to accomplish this. While it is not clear that such a bypass alternative is feasible, in that the Board is not apprised of the layout of the treatment plant, this is offered as an alternative because of Respondent Township's claim as to the difficulty of cleaning these ponds, and because the evidence demonstrates that such a cleaning is badly needed. Respondent Township will also be given a period of 120 days to prepare a plan for long-term compliance to be implemented in the eventuality that Willowbrook does not acquire Township's assets. We will require that such a plan be designed for implementation and completion within 24 months of the date of this Order.

In the eventuality that Willowbrook does in fact purchase the assets of Township, Willowbrook will be allowed a period of 90 days to propose a long-term compliance plan for the plant, which plan may include elimination of the plant altogether. Willowbrook will then be granted a further period of 18 months from the date on which acquisition is effectuated to carry out such a plan; or in the alternative, until compliance would have been required of Township (if there were no acquisition of Township's assets by Willowbrook), whichever period is longer.

These alternatives will provide both for the immediate changes needed to achieve an effluent as close to compliance as possible, under the circumstances, and for the flexibility in long-term compliance plans we feel is required, due to Township's poor financial condition and the contingent nature of Willowbrook's offer to purchase Township's assets.

We will in addition impose a penalty on Township for the violations found herein. The record indicate that, although the sewage treatment plant here in question was not designed to meet the Board's effluent criteria, it could have more closely approached those criteria with proper operation and maintenance. It is the feeling of the Board that the imposition of the civil penalty in this matter will emphasize our desire that, even where complete compliance cannot be immediately achieved, all attempts must be made to abate water pollution to the extent possible.

The Agency quite correctly points out in its brief that any order which may enter in this matter can be held binding against a successor in interest to Township. The Board fears, however, that the imposition of a severe penalty which might then be enforced against Willowbrook or some other purchaser might in fact have a negative effect. For that reason, we are here noting that it is the Board's intent to remedy, by the imposition of the penalty, the problems shown to be the result of past violations. Board Procedural Rule 334 clearly provides for the relief which might be needed by a successor in interest, and would allow any purchaser to obtain modification or reversal of certain parts of our decision here.

It is clearly not the Board's intent, in the imposition of a penalty here, to forestall the sale of Township's assets. On the contrary, based on our findings here, that is clearly the best solution.

As regards the Board's consideration of Section 33(c) of the Act, the alternative Order contemplated here clearly resolves any issues under that Section. There is no question of the fact that the character and degree of the injury caused by Respondent's violations is quite serious. Township has polluted its receiving stream, and based on the testimony presented at the hearing in this matter, it is evident that the operation of Township's sewage treatment plant may result in a health hazard. It is to prevent such hazards that sewage treatment is required.

On the other hand, the social and economic value of a sewage treatment plant cannot be underestimated. It is apparent from the evidence in this matter that some 157 homes are dependent on Township's plant for treatment of their domestic wastes. However, the social and economic value of the sewage treatment plant is significantly reduced

when it is improperly managed and operated. In weighing these questions, it is apparent that the injury imposed on the State by Township far outweighs its value. For that reason, a penalty is clearly indicated, and must accompany our finding of violation.

The Board has previously stated that an improperly maintained and operated sewage treatment plant is patently unsuitable for any area. For that reason, we need not consider the suitability of Township's plant to its present site, or the question of priority of location

There is no question that it is technically practical to abate the pollution presently found in Township's effluent. There is, however, a serious question as to the economic reasonableness of requiring immediate compliance. Insofar as Township has not been able to raise money, it is not economically reasonable to require immediate, full compliance. For that reason, our Order shall reflect a requirement that Township immediately undertake all actions possible to achieve a properly maintained and operated plant, within the technical limitations of the present plant. We shall require full compliance under either of two alternatives over a longer period of time. This flexibility, as allowed by our Order, is designed specifically to deal with these questions of economic reasonableness and short-term technical feasibility.

For the reasons stated above, the Board finds that Respondent Township did in fact violate all of the alleged Sections of the Act and the Water Pollution Regulations. A penalty of \$500, we feel, is reasonable in light of the seriousness of the violations proven and the financial condition of Respondent Township.

This Opinion constitutes the finding of fact and conclusions of law of the Board in this matter.

ORDER

IT IS THE ORDER OF THE POLLUTION CONTROL BOARD that:

1. Respondent Township Public Utility is found to have violated Section 12(a) and 12(b) of the Environmental Protection Act, and Rules 203(a), 403, 404(f), 405, 903(a) and 1201 of Chapter 3: Water Pollution, of the Pollution Control Board's Rules and Regulations. With respect to those violations:

a. Respondent Township Public Utility shall, within 30 days of the date of this Order, employ a sewage treatment plant operator certified as qualified by the Environmental Protection Agency.

b. Respondent Township Public Utility shall, within 180 days of the date of this Order, take all steps necessary to bring its treatment plant as close to compliance with the Environmental Protection Act and this Board's Rules and Regulations as is technically and economically feasible, using the present plant facilities. Respondent shall consult with the Agency with regard to an approval plan.

c. Respondent Township Public Utility shall, within 90 days of the date of this Order, develop a long-term compliance plan to achieve full compliance with the Environmental Protection Act. That plan shall indicate the means and methods by which Township shall attain such compliance within a period of 24 months from the date of this Order, in the eventuality that Township's assets and service area are not acquired by other parties.

d. Respondent Township Public Utility shall, for the violation found above, pay a penalty in the amount of \$500. payment to be made by certified check or money order within 30 days of the date of this Order to:

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

2. Any successor in interest to Township Public Utility shall, within 90 days of such succession, submit to the Environmental Protection Agency a plan to achieve full compliance with the Environmental Protection Act and all applicable Board Regulations. That plan will indicate the methods by which such a successor will achieve full compliance within 18 months of such succession, or within 24 months of the date of this Order, whichever period is longer.

3. Any successor in interest to Township Public Utility shall, if such succession takes place within 180 days of this Order, take all steps necessary to bring Township's present plant as close to compliance with the Environmental Protection Act and the applicable Board Regulations as is technically and economically reasonable using the present plant, within 180 days of this Order or within 120 days of the date of such succession, whichever period is longer.

4. Township Public Utilities, and any successor thereto, shall submit monthly progress reports to the Environmental Protection Agency, Division of Water Pollution Control, 2200 Churchill Rd., Springfield, Illinois 62706, detailing progress on both short and long-term compliance programs.

5. The Board retains jurisdiction in this matter to assure compliance with all provisions of this Order, not to exceed 24 months of the date of this Order.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board hereby certify that the above Opinion and Order were adopted on the 10th day of July, 1975 by a vote of 5 to 0.

Christan L. Moffett
Christan L. Moffett, Clerk
ILLINOIS POLLUTION CONTROL BOARD