

ILLINOIS POLLUTION CONTROL BOARD  
September 18, 1975

ENVIRONMENTAL PROTECTION AGENCY, )  
Complainant, )  
 )  
v. ) PCB 74-422  
 )  
WHITE FENCE FARM, INC., )  
WHITE FENCE FARM CHICKEN, INC., )  
and FILLUP, INC., all Illinois )  
Corporations, )  
Respondents. )

Ms. Mary Schlott, Assistant Attorney General, appeared for Complainant;  
Mr. Douglas P. Hutchison, Attorney, appeared for Respondent.

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

The Environmental Protection Agency, (Agency), filed an enforcement Complaint, on November 15, 1974, naming as Respondents White Fence Farm, Inc. and White Fence Farm Chicken, Inc. An Amended Complaint was filed by the Agency on February 6, 1975, naming Fillup, Inc., as an additional Respondent. Respondents' Motion to Dismiss, filed February 4, 1975, was denied in an Order of the Pollution Control Board (Board) on February 14, 1975. A hearing was held in the matter on June 27, 1975, in Joliet. At that time, the parties entered a Stipulation and Proposal for Settlement (Stipulation), which forms the basis of this Opinion and Order.

Respondent Fillup, Inc., in 1962, acquired the assets of an Illinois corporation named White Fence Farm, Inc., (a corporation other than Respondent White Fence Farm, Inc.). Respondent Fillup operates a restaurant business on the White Fence Farm site, on Joliet Road, in Will County, Illinois. That restaurant is operated under the name "White Fence Farm". On the same site, Respondent White Fence Farm Chicken, Inc. operates a food preparation business. As a part of that business, cleaned chickens are cooked for delivery to retail sales outlets, along with salad products. Both Fillup's restaurant activities and the food preparation activities of White Fence Farm Chicken, Inc., result in discharges to an activated sludge sewage treatment plant and

oxidation pond operated on the same site by Fillup, Inc. The treatment plant treats human wastes, food-associated by-products of the restaurant business, and wash water from the food preparation business operated by White Fence Farm Chicken, Inc.

All costs of the treatment plant are paid by Respondent Fillup. Respondent White Fence Farm Chicken, Inc. pays nothing to Fillup, Inc. for the waste water treatment services provided.

Respondent White Fence Farm, Inc., incorporated in 1968, has its offices at the White Fence Farm site, along with the offices of Fillup, Inc., and White Fence Farm Chicken, Inc. However, White Fence Farm, Inc. has conducted no profit-making business at that site during the past three years.

The sewage treatment plant on the White Fence Farm site was constructed pursuant to a Sanitary Water Board permit issued in 1963. That permit lists the plant's capacity as 16,000 gallons per day. Operational reports submitted to the Agency by the plant operator show that flows through the treatment plant during 1974 ranged from 23,000 to 26,000 gallons per day.

The November 15, 1974, complaint filed by the Environmental Protection Agency alleged violations of Section 12(a) of the Environmental Protection Act (Act) and Rules 203(a), 403, 404(f) and 405 of the Board's Water Pollution Regulations, from August 23, 1973 until the date of filing of the complaint. That complaint also alleged violation of Section 12(b) of the Act and Rule 903(a) of the Water Pollution Regulations from July 30, 1974, until November 15, 1974. Ill. Rev. Stat., Ch.111 1/2, Sections 1,000 et. seq. (1973); PCB Regs., Ch. 3, Rules 203(a), 403, 404(f), 405, and 903(a). The Amended Complaint filed by the Agency on February 6, 1975, differs materially from the original complaint only insofar as it adds Respondent Fillup, which was not named in the original complaint.

The Stipulation in this matter sets forth considerable information regarding the responsibility for the violations alleged. That material can be adequately summarized as follows:

- 1) Respondents White Fence Farm, Inc. and White Fence Farm Chicken, Inc. bear no responsibility for the operation of the treatment plant on the White Fence Farm site; responsibility for any violations of the Act or the Board's Regulations which may be found with regard to that treatment plant are the responsibility of Respondent Fillup.
- 2) Respondent Fillup admits all of the violations alleged in the Agency's Complaint and Amended Complaint.
- 3) Those violations were of a serious nature. (This fact is borne out by the exhibits attached to the stipulation, consisting largely of Agency inspection reports.)
- 4) The violations alleged took place after warnings from the Agency, further affixing responsibility for such violations.
- 5) Respondent Fillup had and has the financial means to correct those violations.

To correct those admitted violations, Respondent Fillup has commenced construction of a sewer line connecting the White Fence Farm site with the Village of Romeoville, which will allow adequate treatment of the effluent from the site. Although the cost of the sewer line is subject to recapture from future tap-ons, construction costs exceeding \$265,000, including engineering and legal fees, are being paid by Respondent Fillup. Testimony at the June 27, 1975 hearing indicated that construction of that sewer main had commenced more than a month prior to the hearing, despite the fact that the annexation petition for the site had not yet been formally approved by the village of Romeoville.

The parties agreed that Fillup, Inc., would post a personal bond, or an equivalent guarantee, equal to the \$265,000 cost of construction of the new sewer line. Respondent Fillup also agreed to pay a penalty of \$4,000 for its admitted violations. Fillup further agreed to cease operation of its sewage treatment plant on the White Fence Farm site within 5 months of Board approval of the Stipulation.

The Board feels that the settlement submitted by the parties to this matter is acceptable. The penalty of \$4,000 will be adequate, despite the severity of the admitted violations, insofar as Respondent Fillup has agreed to a fully adequate plan to achieve compliance. Further, in light of Respondent Fillup's admitted liability for those violations, the Board agrees that dismissal of Respondents White Fence Farm, Inc. and White Fence Farm Chicken, Inc. is proper.

There remains only one matter for discussion. It was the agreement of the parties, in the Proposal for Settlement, that "to the extent required and permitted by law" acceptance of the stipulation and settlement in this matter by the Board would result in the grant of a Variance with respect to water pollution caused by the operation of the treatment plant on the White Fence Farm site, pending cessation of operation at that plant under the terms of the settlement, as described above. The parties agreed that any such Variance arising under the settlement would be for no longer than one year, subject to Board extension.

The Board finds that such a Variance is neither "required" nor "permitted" in this instance. Nor is any such Variance now granted by the Board. Grant of a Variance as requested by the parties here would be in violation of the Variance requirements of the Act, and thus beyond the power of the Board.

This Opinion constitutes the findings 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 Fillup, Inc., is found to have violated Sections 12(a) and 12(b) of the Environmental Protection Act, and Rules 203(a), 403, 404(f), 405 and 903(a) of Chapter 3: Water Pollution of the Pollution Control Board's Rules and Regulations.

2) Respondent Fillup shall pay, as a penalty for the above violations, the sum of \$4,000, payment to be made by certified check or money order, to:


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

3) Respondent, Fillup, Inc., shall cease and desist operation of the sewage treatment plant on its White Fence Farm site no later than 5 months after the entry of this Order.

4) Respondent Fillup, Inc. shall post a personal bond or equivalent guarantee in the sum of \$265,000 to assure completion of the construction contemplated in the accompanying Opinion, such bond to be posted within 30 days of the date of this Order, at the above adress.

5) Respondents White Fence Farm, Inc. and White Fence Farm Chicken, Inc. are dismissed, with prejudice.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 18<sup>th</sup> day of September 1975 by a vote of 3-0 .

  
Christan L. Moffett, Clerk  
Illinois Pollution Control Board