

ILLINOIS POLLUTION CONTROL BOARD

November 15, 1973

MR. & MRS. RAYMOND RIFFLE )  
COMPLAINANTS )  
 )  
 )  
 v. ) PCB 73-190  
 ) PCB 73-191  
 ) (Consolidated)  
DAVID N. MARTIS and CITY OF )  
LOCKPORT, RESPONDENTS )  
 )

MR. EDWARD D. KUSTA, ATTORNEY, in behalf of MR. & MRS. RAYMOND RIFFLE  
MR. FRANCIS A. DUNN, ATTORNEY, in behalf of DAVID N. MARTIS  
MR. EUGENE J. KORST, ATTORNEY, in behalf of the CITY OF LOCKPORT

OPINION AND ORDER OF THE BOARD (by Mr. Marder)

This is an enforcement action filed by citizens, Mr. and Mrs. R. Riffle, against both David N. Martis and the City of Lockport. Two separate complaints were filed on May 4, 1973. The cases were consolidated and set for hearing June 28, 1973.

Mr. and Mrs. Raymond Riffle are private citizens residing at 220 Jefferson Street, Lockport, Illinois. The Environmental Protection Agency was notified of this matter and of the hearing scheduled. In a letter to the assigned hearing officer they indicated their desire not to intervene. Complainant alleges the following:

Against David N. Martis: Connecting and servicing an 8-unit, 2-bedroom per unit apartment building prior to Environmental Protection Agency approval for sewer connection as required by the Environmental Protection Act. Violation was alleged from November 4, 1972, to the date of this complaint.

Against the City of Lockport: Allowing the connection of illegal sewer line from an 8-unit apartment building at 212 Jefferson Street, Lockport, Illinois. Complainant alleged that the city must upgrade sewer line prior to issuance of Environmental Protection Agency permit on said building.

In both actions Complainant seeks both disconnection of the sewer line in question and penalties applicable under the Environ-

mental Protection Act.

At a prehearing conference a Motion to Dismiss the Complaint was filed by the City of Lockport. Said motion alleged deficiencies because the complaint did not conform to the provisions of Sections 31 A and B of Title 8 of the Environmental Protection Act. Section 31 B states in part that:

"Any person may file with the Board a complaint, meeting the requirements of Subsection (a) of this Section."

Section 31 (a) states in part that:

"..., which shall specify the provision of this law or the rule or regulation under which such person is said to be in violation, and a statement of the manner in, and the extent to which such person is said to violate this law or such rule or regulation..."

In response to this motion (R-9), Complainant's counsel argued the motion and stated that: "These are lay people that drafted this complaint."

It is true that lay people drafted the complaint; it is also true that at some time thereafter counsel was retained to represent Complainant. During the above-mentioned prehearing conference, counsel as much as admitted that the complaint was a "bad one" by stating to the City of Lockport that they had violated Section 12, Paragraphs A, B, and C of the Environmental Protection Act and asking the hearing officer to include this allegation as an amendment to the complaint (R. 11).

In response Mr. Korst (counsel for the City of Lockport) suggested that the complaint was bad and that perhaps an amended complaint would be in order. Respondent also stated that, "There was no waiver on my part of any formality in the complaint, absolutely none."

From the above exchange the Board finds that:

1. A complaint was filed and accepted by the Board.
2. A motion to dismiss was filed by the City of Lockport.
3. Complainant, because of the points raised in the motion to dismiss, attempted to correct its complaint, thereby noting its deficiency.
4. Complainant failed to file a formal Motion to Amend Complaint, and must therefore stand on its original complaint.
5. The motion to dismiss raises valid legal points.

The Board feels that Respondent's motion to dismiss is valid. The un rebutted points stand as a viable reason for dismissal.

The Board on the basis of the above dismisses the City of Lockport from this action.

The remaining Respondent, Mr. David N. Martis, did not file any such motion. Because a complaint was filed, accepted by the Board, and unchallenged, this action will continue.

At the hearing of June 28, 1973, the following facts were stipulated to:

1. Mr. and Mrs. David Martis, Respondents herein, are the owners of an apartment building located at 212 Jefferson Street in Lockport, Illinois.
2. Construction of this building began in October of 1972 and was completed in March of 1973. A sewer line for said building was connected in November of 1972.
3. At the time construction of the building began, Mr. and Mrs. Martis obtained all necessary building permits from the City of Lockport; however, an Environmental Protection Agency permit was never obtained. A conditional permit, #1973-HB-605, was granted to David N. Martis on April 9th, 1972.
4. The building in question was designed for 8 units of 3 apartments. Each unit has two bedrooms. Presently 5 units are rented; 8 people presently occupy this building.
5. The sewer line is 72 feet of 6-inch sanitary service sewer pipe and presently is in operation.
6. Environmental Protection Agency permit #1973-HB-605 specifically forbids operation of the sewer connection until a downstream obstruction is removed. The City of Lockport is in the process of removing this obstruction. Present waste discharge in question is insignificant to the total loading of this line and the system, according to Mr. Gordon McCluskey, Director of Public Works of the City of Lockport.

The above stipulation clearly admits to the fact that a violation did indeed occur. The only issue to be decided by the Board is: Are there sufficient mitigating circumstances to eliminate or reduce a monetary penalty which would normally be imposed under such a set of circumstances?

Respondent claims (R. 18) that in a contract drawn with Gene Burla (contractor) a clause was provided that it was Burla's sole responsibility to obtain all permits. The question of obtaining a permit ran into a number of snags as witnessed by the exhibits

filed:

Comp. Exhibit #3 - Letter from Environmental Protection Agency to City of Lockport asserting the need for a permit (November 13, 1972).

Resp. Exhibit #1 - Letter from Environmental Protection Agency to Respondent's contractor, stating that a permit was not required (March 29, 1973).

Comp. Exhibit #4 - Conditional Permit April 9, 1973.

Comp. Exhibit #2 - Letter from Environmental Protection Agency to Respondent's contractor, correcting information included in Resp. Ex. 1 (May 1, 1973).

Comp. Exhibit #1 - Copy of Board Order PCB 73-144 denying petition for sewer ban variance.

From the above it is clear that the sequence of events is muddled. However, it is still clear that a violation did indeed occur.

This complaint was filed because Complainant wanted to be insured that she would not have sewage or water pollution problems in connection with her property (R. 21). This is a valid fear. Although a monetary penalty was asked, it is the Board's feeling that relief from the problem was Complainant's main concern. Fortunately such relief has occurred.

A letter was filed July 3, 1973, by the City of Lockport, stating that the obstruction in the city sewer line has been removed, and that the potential backup problem has been removed.

The only other point of interest is that at no time did Complainant suffer sewage backup as a result of the illegal hookup.

Because of the rather confusing facts involved, and the fact that no pollution actually occurred and the problem has been resolved, the Board finds no value in imposing a harsh penalty on the Respondent. A violation, however, did occur, and a token penalty must be imposed to deter further occurrences of this nature.

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

ORDER

IT IS THE ORDER of the Pollution Control Board that Respondent, David N. Martis, shall pay to the State of Illinois the sum of \$100

within 35 days from the date of this order. Penalty payment by certified check or money order payable to the State of Illinois shall be made to: 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, certify that the above Opinion and Order was adopted by the Board on the 15<sup>th</sup> day of November, 1973, by a vote of 5 to 0.

Christan L. Moffett