

The testimony of Complainant at the hearing was directed at the odors coming from the sludge lagoon located along the southern boundary of the plant's property. The testimony consisted of homeowners testifying to the malodors and to a rat problem developing around the sludge lagoon. The Board takes notice of the rat problem as shown in the testimony of Terrence Molloy, an engineer for the DuPage County Health Department (R. 8-9), David Wolff (R. 57), and Raymond Glass, also of the DuPage County Health Department (R. 292). Mr. Glass did follow up inspection of the plant site and testified that upon informing the village of the rat problem corrective measures were taken (R. 294). The corrective measures include: the contracting with a pest control firm on a yearly contract to maintain pest control on the site; cutting of weeds on the site to eliminate breeding grounds for the rats; and placing grit in sealed containers in order to have it hauled away and deprive the rats of their food source. The Board notes this problem and the abatement of it, but will not render a decision on the matter because the complaint is inadequate on this count. No order will be entered involving this area. To have the Board consider this matter, Complainant should have referred to Rule 314 (F) of Chapter 7, Solid Waste Regulations. This would have brought into issue whether the Village is or should be operating a sanitary landfill, as the regulation covers. The Board strongly urges the Respondent to maintain its abatement procedures so as to foreclose future action on this count. The record contains a great deal of testimony on this point, which is why it is discussed at all.

9 (A) (B) Violation

There was a great deal of testimony as to malodors emanating from the sludge lagoon. The plant is an activated sludge type plant. The sludge is removed from the water in the secondary treatment of the plant, and taken to dry in drying beds (R. 331). Partially dried sludge is hauled to the sludge pit (R. 119).

Most of the testimony was that of the homeowners. It was all similar in the fact that the homeowners noticed odors that were characterized as: "rotten stinking odors," (R. 43); putrid (R. 55, 91); like an "outhouse on a farm" (R. 80); like "human waste" (R. 204). The odor is noticed mostly in the evening hours (R. 136, 54, 92, 204), and testimony showed that odor was noticed by some witnesses every day (R. 136), and by others at least 3 to 4 times per week (R. 64, 93, 236-40). The smell comes to this area usually when the wind is from the north or northwest (R. 67, 83, 94) and the smell gets stronger as one walks north toward the plant (R. 278, 222). Two of the witnesses, Mr. Wolff and Mr. Linell, drove to the plant and upon arriving at the sludge pit they noted that the odor emanated from there (R. 56, 243).

The witnesses showed generally the same kind of restricted use of their property because of the odor. They could not use their back yards (R. 37, 64, 98, 212, 222, 283). They felt ill or nauseated by

the odor (R. 98, 212, 283). Other problems centered around embarrassment at having visitors (R. 98) and odor in clothes (R. 98).

The expert testimony of Charles Corley of the Illinois Environmental Protection Agency was very informative (R. 114). Mr. Corley is an environmental specialist with the Agency. He began investigating citizen complaints of odors and rats from the treatment plant on June 21, 1973. He saw a Mr. D'Andrea at the plant who told him that partially dried sludge was being hauled to the sludge lagoon (R. 119). D'Andrea stated that this was being done because of inadequate drying space on the plant site (R. 120).

Corley then talked to Mr. Galligan, the village administrator, who told Corley that the dumping would stop and the sludge would be hauled to the village golf course (R. 122). On his last inspection, Corley noted that the sludge lagoon was still being used (R. 124).

Complainant failed to elicit sufficient proof as to whether Respondent does, or does not, have a required permit from the Environmental Protection Agency to operate its sludge lagoon. The record indicates that the sludge lagoon was shown on the plans submitted to the Agency for the plant's construction permit in 1969 (R. 193). The record is totally inadequate as to this point, and we do not consider this point further. The Board does not prove up Complainants' case for them when the record is not provided to make a determination.

The Agency recommended certain actions for elimination of the odor problem in a letter written to Administrator Galligan on July 3, 1973. (Comp. Exhibit #4, R. 195) This letter suggested that sludge dumping be discontinued, the lagoon drained, and that it be covered and sealed. On the witness's most recent inspection of the plant before the hearing, sludge was still being dumped in the lagoon (R. 174-5).

Corley testified as to two methods for disposal of the sludge: 1) Dewater and incinerate the sludge; and 2) dry the sludge and haul it away (R. 141).

The sludge problem at the plant is not one that will go away. According to the record, as part of the DuPage County Regionalization Plan proposed by the Board, the Glen Ellyn plant is potentially slated to go from a capacity of 6 mgd to a capacity of 18 mgd (R. 193-5). The witness testified that there is no room now in the plant site to increase drying bed capacity (R. 185).

Frank Reno, Director of Public Works for the Village of Glen Ellyn, testified as to what the village is doing to correct the problem (R. 342-6). These included:

- 1) Opening up the bank of the lagoon to allow the water to drain off;
- 2) Drainage tile will be installed to prevent water from running into the lagoon;
- 3) Drying bed use will be changed so that sludge hauled to the lagoon will be of drier quality;
- 4) Investigate other methods of sludge disposal while deferring action until plans for the plant's expansion can be considered under the county regionalization plan. These include incineration and sludge farming.
- 5) Removal of sludge presently on the site to Glen Ellyn Golf Course as fertilizer. After this sludge is hauled away, the lagoon will be used again for on-site storage of future sludge.
- 6) The grit is now being removed from the plant after storage in sealed containers by a private scavenger service.

We feel that Complainant has presented ample testimony as to the nuisance caused by odors originating in the sludge lagoon at Respondent's plant. "Whether a nuisance exists will depend largely upon the reactions of citizens of the community to the odors emitted from Respondent's plant." (Environmental Protection Agency v. Tee-Pak Inc., PCB 72-81).

Respondent has elicited testimony from most of the homeowners that when they bought their homes, they did not inspect the area to determine whether there was a problem in the area (R. 86, 106, 215). The validity of its defense that Petitioners impliedly consented to the odors caused by normal operations of a sewage treatment plant had been dismissed by the Board in Enders v. Village of Glendale Heights, PCB 72-252. The doctrine of "Caveat Emptor" is on the wane under modern trends of law, and we do not feel that any property owner should be subjected to odors from a plant such as Respondent's on a regular basis.

Odor from sewage treatment plants constitutes air pollution as contemplated by the Environmental Protection Act. (Environmental Protection Agency v. Danville Sanitary District, PCB 71-28.)

Therefore we find that Respondent is in violation of Section 9 (A) of the Environmental Protection Act. There is an inadequate record to determine if there is a 9 (B) violation.

Perhaps the most unfortunate aspect of this action is, as mentioned above, the inadequacy of the record. The Board notes that a

very serious problem exists. Further technical data is necessary to indicate how this problem should be resolved. The parties deserve a final adjudication of this matter, and one will be given. The Order will direct that Respondent cease and desist from violating Section 9 (A) of the Act, such Order to take effect 120 days from the entry of this Order. There are many waste treatment plants of this type in the state. This vast utilization of similar technology has convinced the Board that it is not necessary for a facility such as this to generate malodors.

The monetary penalty assessed in this matter is a small one. First, the Board feels that money that would be used for a monetary penalty would be better spent in abating this violation. Secondly, Respondent is a municipality, and to penalize a municipality is an action that penalizes innocent citizens.

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:

1. Within 60 days from the date of this Order, Respondent shall submit to the Environmental Protection Agency a compliance plan for bringing its facilities into compliance with Section 9 (A) of the Environmental Protection Act.

Within 120 days from the date of this Order, Respondent shall cease and desist from violation of Section 9 (A) of the Environmental Protection Act.

2. Respondent shall pay to the State of Illinois the sum of \$200 within 35 days from the date of this Order. Penalty payment by certified check of 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 13th day of December, 1973, by a vote of 5 to 0.

