



and that the Board take such further action as may be necessary to abate said violations pursuant to Section 46 of the Act.

The complaint makes no assertion that respondent has failed to meet prescribed BOD and suspended solid levels or that the sewage treatment plant construction program is not being complied with, all as provided in SWB-14.

Respondent filed a special and limited appearance and motion to dismiss, asserting that the cause was moot because the Environmental Protection Agency had issued respondent a construction permit, that the provisions for notice by mailing violate constitutional due process requirements, that the Environmental Protection Act constitutes an invalid delegation of legislative and judicial authority to the Pollution Control Board, that all actions under the Act must be filed by the Attorney General or by the State's Attorney, that the Pollution Control Board lacks power to assess money penalties and that the complaint fails to allege any continuing violations of any act, rules or regulations, or the threat thereof, or the lack of an adequate remedy at law.

We find all of the contentions wholly lacking in merit. Obviously, the granting of a permit to correct violations in no way moots an enforcement or penalty action based on the violations alleged. The provisions for notice by mailing are based on the procedural rules of the Pollution Control Board, the authorization of which is expressly granted by the statute. (Environmental Protection Act, Section 26). No reason suggests itself why due process is lacking, particularly since respondent received notice and participated in the hearing. Arguments as to our delegated authority and power to assess penalties have been answered many times in our past opinions and need not be elaborated here. (See EPA v. Granite City Steel Company, PCB 70-34, March 17, 1971; EPA v. Modern Plating Corp., PCB 70-38, May 3, 1971). The Act expressly provides for the filing of enforcement actions before the Board by the Environmental Protection Agency. (Environmental Protection Act, Section 4(e)). Lastly, the complaint adequately pleads violations of the Act and regulations and is not defective as a pleading.

We find respondent to have caused water pollution and to have violated effluent and stream criteria with respect to odor and color. We assess a penalty in the amount of \$100.00 for the unwarranted discharge of sludge from the lagoon into the receiving stream on February 14, 1972, constituting violations of SWB-14 with respect to both effluent and stream freedoms and Section 12(a) of the Act. The penalty is nominal in consideration of the construction program which respondent has already embarked upon and because of the absence of proof of other substantial, continuing and flagrant violations. Our order will direct respondent to proceed with its construction program pursuant to the time schedule provided, all as will be more fully set forth below.

The Village of Lake Zurich lies partly within the Des Plaines River water shed and partly within the Fox River water shed. Two sewage treatment plants serve the Village, the Southeast facility being within the Des Plaines River water shed, and the Northwest waste water treatment plant, the subject matter of the present proceeding, being within the Fox River water shed. The Northwest water treatment plant discharges into Flint Creek, a tributary of the Fox River. The Northwest plant, a trickling filter operation, was originally constructed in the 1920's and was improved in 1967 by the addition of a tertiary stabilization pond having 3 million gallons of storage capacity as an adjunct to the primary clarification and secondary trickling filter waste water treatment plant. Postchlorination is provided for the effluent as received by the polishing lagoon. The design capacity of the plant is .5 mgd and serves approximately 4,000 people. (Res. Ex. 11, R. 138).

Agency witnesses at the hearing consisted of residents whose homes are contiguous with Flint Creek, a biologist who testified to the character of the biota above and below the discharge from the plant, and Agency personnel who testified to various tests that had been conducted in the stream and of the effluent in the vicinity of the plant. Respondent's witnesses consisted of personnel involved in the sewage treatment plant construction and modernization program presently being implemented by the Village, as well as Village officials charged with the operation of the sewage treatment facility. The evidence of the witnesses living in the proximity of the stream, while manifesting the presence of odor emanating from it, was not probative of the source of the odor. The evidence indicated that effluent from septic tanks was likely to find its way into the stream because of the clay character of the strata contiguous with the stream making septic tank percolation unsatisfactory and runoff likely. These witnesses were unable to establish that the sewage treatment plant or the conduct of the Village were the cause of the odors detected. On the other hand, exhibits introduced by the Agency did establish that the sewage plant discharges had an adverse effect on the biota and caused odor and discoloration in the stream. A comparison of analyses of organisms taken on June 16, 1971 disclosed the presence of organisms upstream from the plant and their absence, with one exception, below the point of discharge. The evidence showed that the organisms remaining below the discharge and not affected were pollution tolerant, strongly suggesting that the discharge did eliminate those organisms not pollution tolerant. (EPA Exs. 3 and 4, R. 31-35).

Inspection made and samples taken on June 7, 1971, disclosed that the stream was "very clear" upstream from the plant whereas 20 feet downstream of the outfall, the stream was foamy, turbid and discolored. (EPA Exs. 17 and 19). Tests taken on June 9, 1971 showed the stream clear upstream whereas observations made on the

same day in the vicinity of the lagoon outfall again showed the stream to be foamy, turbid and discolored and possessing a slight odor. Similar characterizations were found the same day 700 feet downstream from the plant outfall. (EPA Exs. 20, 21 and 22). Observations made on May 19, 1971 disclosed that downstream the water was visibly discolored and foaming and greenish gray in color whereas upstream the water was clear. (EPA Ex. 24). On February 14, 1972, an inspection of the plant was made by Agency personnel when the lagoon was being drained to enable cleaning. On that occasion, the sludge contained in the lagoon was discharged directly into the receiving stream which effluent was characterized as "black and foul smelling". On being advised of the violations being committed, plant personnel partially abated the discharge, but the black discharge continued until later in the day. Samples taken in the vicinity of the point of discharge disclosed high suspended solids (188) and BOD (85) readings. (EPA Ex. 36). An Agency report made on this occasion (EPA Ex. 42) notes the stream to be very discolored from the lagoon, the discharge "black as coal", and the presence of heavy septic odor. Inspections on April 5, 1972 (EPA Ex. 58) disclosed noticeable discoloration 300 feet downstream whereas on the same day the flow upstream was clear. From the foregoing evidence, it is abundantly clear that by the impact on the biota, respondent has caused or allowed water pollution as defined in the Act and has violated SWB-14, Rule 1.03, with respect to color and odor in such a degree as to create a nuisance, and has permitted the discharge of substances harmful to aquatic life, in violation of prescribed "stream freedoms". The events and circumstances above described also manifest a violation of SWB-14, Rule 1.08, paragraph 10(b)(3) with respect to effluent criteria prohibiting the presence of color and odor. The evidence does not disclose the presence of settleable solids or floating debris. While our newly enacted regulations with respect to effluent criteria and water quality standards do not require completion of tertiary facilities before December of 1973, water pollution has been prohibited for many years and basic primary treatment has been designed to eliminate the various offences of which respondent is guilty. (See Springfield Sanitary District v. EPA, PCB 70-32).

However, the Village is pursuing a program which will improve its entire sewage treatment process and, if completed within the time limits represented, will satisfy the requirements of tertiary treatment with a BOD of 4 and a suspended solids limit of 5, by February of 1973, well before the time limits prescribed by Regulations Chap. 3, Part IV, Sec. 404. Two bond issues have been passed by the Village, one in the amount of \$400,000, and a second of \$700,000 enabling expansion of the sewage treatment facilities by the addition of a 300,000 GPD activated sludge facility and

contact stabilization unit, and the modification of the primary and secondary filters of the existing plant. (Res. Ex. 11, p. 5). The stabilization pond is to be developed as a multi-cell and aeration facility for improvement of the effluent into the Flint Creek tributary. The entire projected flow as developed is to receive mixed media tertiary filtration prior to discharge into the stream. The stabilization pond is being retained to balance any wet weather flow that may develop. The modernization and expansion is in contemplation of an extensive program of infiltration reduction to be conducted by the Village. The holding pond for secondary effluent prior to tertiary filtration assures improved operation of the mixed media filters. Construction of the improvements and expansion of the Northwest water treatment plant commenced on February 15, 1972. The program contemplates the operation of the tertiary holding pond and aerators by May 20, 1972. The sludge bed addition is to be completed by September 15, 1972. The contact stabilization unit is to be in operation by November 15, 1972. The tertiary filters will be in operation by February 1, 1973. (Res. Exs. 10, 11 and 12, R. 144). If the foregoing program is carried to completion on the dates proposed, the Village of Lake Zurich will be in compliance with the newly established Pollution Control Board regulations with respect to the tertiary and advanced treatment ten months before the deadlines prescribed. (See Illinois Pollution Control Board Rules and Regulations, Chap. 3, Water Pollution, Part IV, Sec. 404). The program appears to be a good one and we will direct its completion in the manner and within the time limits proposed. Because of the observed instance of sloppy operation in discharging sludge from the lagoon into the receiving stream, we assess a penalty in the sum of \$100.00. We find respondent to have caused water pollution by causing a discharge having an adverse effect on the biota in violation of Sec. 12(a) of the Act and to have violated SWB-14 with respect to odor and color, both in violation of the stream and the effluent standards. We will direct the Village to complete the implementation plan for the Northwest Sewage Treatment Plant and to meet the dates stated by it for completion. Improvements of the plant as proposed should eliminate all future violations of the character found as well as those asserted.

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. The Village of Lake Zurich shall abate its polluttional discharge from the Northwest Waste Water Treatment Plant by complying with the following construction program for the improvement and expansion of the Northwest Waste Water Treatment Plant as provided in Respondent's Exhibits 11 and 12 filed herein:
  - (a) The tertiary holding pond and aerators shall be completed as of this date.
  - (b) The secondary holding pond shall be in operation by July 1, 1972.
  - (c) The sludge bed addition shall be completed by September 15, 1972.
  - (d) The contact stabilization unit shall be in operation by November 15, 1972.
  - (e) The tertiary filters shall be in operation by February 1, 1973.
2. Penalty in the amount of \$100.00 is assessed against the Village of Lake Zurich for violation of Rules 1.03 and 1.08 of SWB-14 and Section 12(a) of the Environmental Protection Act. Payment shall be made to the State of Illinois and sent to the Environmental Protection Agency, Fiscal Services Division, 2200 Churchill Drive, Springfield, Illinois 62706, within thirty-five days from the entry of this Order.

I, Christan Moffett, Clerk of the Pollution Control Board, certify that the above Opinion and Order was adopted by the Board this 30<sup>th</sup> day of May, 1972, by a vote of 5 to 0.

Christan L. Moffett