

ILLINOIS POLLUTION CONTROL BOARD  
January 6, 1977

ENVIRONMENTAL PROTECTION AGENCY, )  
 )  
 Complainant, )  
 )  
 v. ) PCB 75-484  
 )  
 CITY OF MACOMB and MELWOOD, INC., )  
 )  
 Respondents. )

- and -

ENVIRONMENTAL PROTECTION AGENCY, )  
 )  
 Complainant, )  
 )  
 v. ) PCB 75-489  
 )  
 CITY OF MACOMB and PETE KLINE, )  
 )  
 Respondents. )

- and -

CITY OF MACOMB, )  
 )  
 Petitioner, )  
 )  
 v. ) PCB 76-27  
 )  
 ENVIRONMENTAL PROTECTION AGENCY, )  
 )  
 Respondent. )

Honorable William J. Scott, Attorney General, by Mrs. Mary Schlott, appeared on behalf of the Environmental Protection Agency;  
Mr. Bruce Biagini, City Attorney, appeared on behalf of the City of Macomb;  
Mr. Robert Karton of Kreger & Karton, Ltd., appeared on behalf of Pete Kline;  
Mr. James Lloyd of Claudon, Elson & Lloyd, Ltd., appeared on behalf of Melwood, Inc.

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

On December 19, 1975, the Environmental Protection Agency (Agency)

filed a Complaint against the City of Macomb (City) and Melwood, Inc. (PCB 75-484) and also filed a Complaint against the City and Pete Kline (PCB 75-489). Each Complaint charged Respondents with operation of a sanitary sewer extension without an operating permit, in violation of a special condition in the permits issued for the installation of the sewer extensions and in violation of the Environmental Protection Act (Act). On January 26, 1976, the City filed a Petition for Variance from Rule 203(b) and Rule 203(f) of Chapter 3 of the Board's Rules and Regulations: Water Pollution (PCB 76-27). On February 11, 1976, the City filed an Amended Petition for Variance, which provided additional information supplemental to its Petition for Variance. The Agency filed its Recommendation in PCB 76-27 on April 20, 1976. On March 11, 1976, the above-described cases were consolidated. Hearings were held on the consolidated matters in the City of Macomb, McDonough County, on June 14, 1976 and July 7, 1976.

Respondents, Melwood, Inc. and Pete Kline, are the developers of Melwood Estates and Springview Hills Subdivisions, respectively. Melwood Estates is a 74 lot subdivision located on the north edge of Spring Lake across from the City of Macomb. Springview Hills is a 40 lot subdivision located adjacent to Melwood Estates. (Agency Exhibits 1, 2, and 3.). The City, Melwood, Inc. and Pete Kline made a written agreement on or about July 17, 1971, and on November 20, 1972, that the City would provide water and sewage treatment facilities to the subdivisions by July, 1973. The two developers were to provide sanitary sewers in the subdivisions. (Agency Exhibits 16, 17 and 18.)

Subsequently, the parties applied to the Agency for permits for the construction of sanitary sewers in Melwood Estates and Springview Hills. Permit #1973-HB-144 was issued to Pete Kline to install and the City of Macomb to own but not to operate a sanitary sewer extension to serve Springview Hills Subdivision in Macomb with outlet to an 8 inch sanitary sewer, thence to a proposed Macomb-Spring Lake Sewage Treatment Plant. Special conditions for this permit required that the sanitary sewer extension not be operated until the Agency issued an operating permit which was not to be issued until the proposed treatment plant was constructed. (Agency Exhibit 2.)

On February 10, 1972, Permit #1972-HB-167 was issued to Melwood, Inc., to install and to the City of Macomb to own but not operate a sanitary sewer extension to serve Melwood Estates Subdivision with outlet to the wet well of the lift station and thence to the proposed Macomb-Spring Lake Sewage Treatment Plant. Special Condition #2 of this permit required that the sanitary sewer extension not be operated until the Agency issued an operating permit. (Agency Exhibit 2.)

The proposed plant was permitted pursuant to Agency permit #192-AA-550 issued to the City of Macomb. (Agency Exhibit 4). The

Plant has not been constructed. (Agency Exhibit 10.)

At the hearing on July 7, 1976, the Agency recommended that the Complaint as to Pete Kline and Melwood, Inc., be dismissed (R.299-302). Because there is no evidence that Respondents Kline and Melwood operated the sewer extensions or otherwise violated the permits' conditions, the Complaint as to each of them is hereby dismissed.

The City admits in its Admission of Facts and Final Argument that it operated the sewer extensions without a permit (R.5). An Agency inspector learned from the City in December of 1973 that the residences were built in the two subdivisions and connected to the sanitary sewer extensions and that the City pumped sewage out of the two sewers on a weekly basis and hauled the waste to the Macomb treatment plant (Agency Exhibit 10). On November 13, 1975, an Agency inspector examined the two sanitary sewers and observed raw sewage in the manholes. As of the hearing, thirteen homes in the subdivisions had been constructed and occupied (R.204).

The Board finds that the City did violate conditions in its permits to install the sanitary sewer extensions involved herein by operating the sewers without a permit and that, therefore, the City violated Section 12(b) of the Act. However, at the hearing the City presented many facts in mitigation.

The evidence submitted at the hearing indicates that the City anticipated grant assistance for the construction of a sewage treatment plant as early as 1967 (R.64) and that the City had applied for grant money by 1971 (R.39). Its belief that grant assistance would be forthcoming was the basis for its agreement with Melwood and Kline to provide sewer service to the subdivisions. In October, 1973, the Agency published its first priority rating for grant assistance. The City was rated number 16 (R.21). However, in the April, 1974, priority rating published by the Agency, the City dropped in priority to number 644 (R.36). The Agency testified at the hearing that it was required to compile the initial list in haste and had committed many errors (R.188). The City argues that it allowed the connection because it expected funding for the construction of the plant. It began tank trucking the sewage in order to keep the developers, who had a large financial commitment based on the expectation of funding, from bankruptcy and protect its water supply at the same time.

The Agency argues that the plant project was financially feasible for the City. In its Recommendation, the Agency found that the cost of the sewage treatment plant and interceptors would be \$300,000, and that the cost per person, in a City of 22,000, would be \$13.64. However, at the hearing Dr. Richard Hattick, an economist with Western

Illinois University, testified as to available money that the City is more like a City of 10-12,000 persons due to the large number of students in its population and its very limited tax base. Witnesses for the City also testified that in the past year the City has had a substantial deficiency in its General Corporate Account, that there is no money in the Sewer Extension Fund, that the Sewer Surplus Fund has a negative balance of \$2,393.00, and that revenue bonds on the project would be impossible to sell (R.448).

The Agency presented no evidence of any actual pollution having resulted from the City's tank trucking of the sewage. The Agency testified that the tank trucking system is too dependent on variables and that a number of possibilities exist for critical situations which may result in sewer overflows. However, no evidence was presented that any critical situations resulting in sewer overflows actually occurred. Furthermore, the City deliberately chose the tank trucking method over allowing the installation of individual septic tanks in order to protect Spring Lake (R.20). A witness for the City testified that the City has spent \$20,000.00 in engineering fees in an attempt to solve the sewage treatment problem (R.21).

The Board has considered the factors enumerated in Section 33(c) of the Act. The Board finds that the City relied in good faith on assurances that grant assistance would be forthcoming and tank trucked the sewage in an effort to meet its agreement with the developers in an environmentally sound manner. The Board finds that no penalty is warranted in this case.

After the hearings were concluded, the City received an offer to purchase a three year old "package" sewage treatment plant with a P.E. of 350. The plant, which would have adequate capacity to serve both subdivisions when fully developed, is to be placed near the Spring Lake dam, and the effluent will be discharged into the stream below the dam. The City will apply for the necessary permits as well as a Pfeffer exemption. The Agency indicates in a letter to the City's Mayor that, if the above-stated assumptions are correct, the proposed plan for sewage treatment has the preliminary approval of the Agency. The Board finds that the proposed plan is a reasonable means of resolving the sewage treatment problem involved herein. The City indicates it will need adequate time to install the sewage treatment plant and construct intercepting sewers. The Board will, therefore, order the city to continue tank trucking of the sewage until July 1, 1977, at which time installation of the proposed sewage treatment plant shall be completed, provided the proper permits have been obtained.

As to the requested variance from Rules 203(c) (phosphorus) and 203(f) (ammonia nitrogen), such variance was sought for the discharge to Spring Lake from proposed septic tanks followed by sand filters and chlorination. However, because of the package plant the City

intends to purchase, the septic tank proposal has been abandoned. The Board, therefore, finds the variance petition to be inapplicable to the present situation and will dismiss it without prejudice.

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. The City of Macomb is found to have violated Special Condition #3 of Permit #1973-HB-144, Special Condition #2 of Permit #1972-HB-167, and Section 12(b) of the Environmental Protection Act.
2. The City shall obtain the proper permits from the Environmental Protection Agency and shall execute its proposal to install and operate a sewage treatment plant, as outlined in its Final Argument and attached Exhibit A, by July 1, 1977.
3. The City shall continue to haul the sewage from Springview Hills and Melwood Estates to the City's sewage treatment plant until the proposed plant is in operation.
4. The Complaint in PCB 75-484 is hereby dismissed with prejudice as against Melwood, Inc., and the Complaint in PCB 75-489 is hereby dismissed with prejudice as against Pete Kline.
5. The City's variance petition, PCB 76-27, is hereby dismissed without prejudice.

Mr. Young abstained.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 6th day of January, 1977 by a vote of 3-0.

  
Christan L. Moffett, Clerk  
Illinois Pollution Control Board