

ILLINOIS POLLUTION CONTROL BOARD
February 6, 1986

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) PCB 84-120 and PCB 84-121
) (consolidated)
ATLAS SERVICE COMPANY, INC.,)
an Illinois corporation;)
RALPH WALLER, individually and as)
an officer of Atlas Service)
Company, Inc., and THOMAS)
WALLER, individually and as an)
officer of Atlas Service)
Company, Inc.,)
)
Respondents.)

MS. CHRISTINE ZEMAN, ASSISTANT ATTORNEY GENERAL, APPEARED ON
BEHALF OF THE COMPLAINANT.

CLAUDON, LLOYD, BARNHART & BEAL, LTD. (MR. GARY BARNHART, OF
COUNSEL) APPEARED ON BEHALF OF RESPONDENT ATLAS SERVICE
COMPANY, INC.

OPINION AND ORDER OF THE BOARD (by W.J. Nega):

This matter comes before the Board on a seven-count
Complaint filed on August 3, 1984 by the Illinois Environmental
Protection Agency (Agency) in PCB 84-120 (Georgetown) and a
similar seven-count Complaint filed on August 3, 1984 in
PCB 84-121 (Meadowbrook).

Respondent Atlas Service Company, Inc. (Atlas), an Illinois
corporation registered in 1971 and doing business in Illinois,
owns and operates a sanitary sewage collection system and a
wastewater treatment plant constructed in 1972 which serves the
Georgetown residential subdivision (Georgetown system) located
about one mile west of Macomb in McDonough County, Illinois. The
Georgetown subdivision, which is a 194 unit townhouse development
with common recreational facilities, has a sanitary sewage
collection system which includes 11,000 feet of collecting sewers
and a terminal lift station. Its wastewater treatment plant
includes a three-cell lagoon and a chlorination chamber. Treated
effluent from the Georgetown system is discharged into an unnamed
stream tributary to the East Fork of the La Moine River. Both
the unnamed East Fork tributary and the La Moine River are
accumulations of water which flow wholly within the State of
Illinois. Before reaching the Georgetown treatment plant, raw

sewage can be discharged from an interceptor sewer into the unnamed tributary to the East Fork of the La Moine River.

Respondents Ralph Waller and Thomas Waller are both officers of Atlas who directed and actively participated in the operation of both the Georgetown and Meadowbrook systems.

Count I of the Complaint in PCB 84-120 alleged that, from May 17, 1979 until August 3, 1984 (including, but not limited to, May 17-23, 1979; August 24, 1979; November 14, 1980; March 26, 1982; July 13, 1982 through September 14, 1982; January 28, 1983; April 27, 1983; and February 8-9, 1984), the Respondents caused or allowed discharges causing, or threatening to cause, water pollution in violation of Section 12(a) of the Illinois Environmental Protection Act (Act) by allowing raw sewage bypasses from the Georgetown system to enter the East Fork of the La Moine River and its unnamed tributary.

Count II alleged that, on the dates previously specified in Count I, the Respondents' raw sewage bypasses from the Georgetown system caused violations of Section 12(a) of the Act and violations of 35 Ill. Adm. Code 302.203 (unnatural sludge or bottom deposits, floating debris, unnatural color or turbidity); 35 Ill. Adm. Code 304.105 (effluents causing violations of applicable water quality standards); 35 Ill. Adm. Code 304.106 (effluents containing settleable solids, floating debris, visible oil, scum, and sludge solids); and 35 Ill. Adm. Code 306.103(b) (excess infiltration into sewers -- overflows from sanitary sewers). Additionally, it is alleged that, by allowing raw sewage bypasses from the Georgetown system, the Respondents caused the dissolved oxygen concentration of the unnamed tributary to the East Fork of the La Moine River to be less than 5.0 mg/l on, but not limited to, August 8, 1979 and February 9, 1984, in violation of 35 Ill. Adm. Code 302.206 and Section 12(a) of the Act.

Count III alleged that, from its construction in 1972 until January, 1981 and from October, 1983 until August 3, 1984, the Respondents operated the Georgetown system's treatment plant without the direct and active field supervision of an Agency-certified operator in violation of the NPDES Permits for the system, 35 Ill. Adm. Code 312.101 and Section 12(f) of the Act.

Count IV alleged that the Respondents caused or allowed the discharge of effluents in violation of the NPDES Permits for the Georgetown system, 35 Ill. Adm. Code 309.102, and Section 12(f) of the Act.

Count V alleged that, from July, 1978 until August 3, 1984, the Respondents: (1) failed to provide adequate facilities to measure the effluent flow discharged from the Georgetown treatment plant in violation of the system's NPDES Permits, 35 Ill. Adm. Code 305.103 and 309.102, and Section 12(f) of the

Act, and (2) failed to monitor the effluent discharged from the treatment plant and/or submit the required monthly discharge monitoring reports to the Agency in violation of the system's NPDES Permits, 35 Ill. Adm. Code 305.102 and 309.102, and Section 12(f) of the Act.

Count VI alleged that the Respondents failed to report the raw sewage bypasses from the Georgetown system (that occurred on the dates specified in Count I of the Complaint) to the Agency in violation of the system's NPDES Permits, 35 Ill. Adm. Code 305.102 and 309.102, and Section 12(f) of the Act.

Count VII alleged that the Respondents have failed to provide or maintain adequate equipment to alert them to raw sewage bypasses due to power or equipment failures or adequate back-up equipment in such instances, thereby violating the system's NPDES Permits, 35 Ill. Adm. Code 306.102(a) and 309.102, and Section 12(f) of the Act.

Atlas also owns and operates a sanitary sewage collection system and a wastewater treatment plant constructed in 1969 which serves the Meadowbrook residential subdivision (Meadowbrook system) located approximately one mile west of Macomb in McDonough County, Illinois. The Meadowbrook subdivision is a 112 home single-family development. About 8,000 feet of collecting sewers and a terminal lift station are involved in the sewage collection portion of the Meadowbrook system. The Meadowbrook system's wastewater treatment facilities include a three-cell lagoon and a chlorination chamber. The Meadowbrook system discharges its treated effluent into an unnamed stream which is tributary to the East Fork of the La Moine River. Before reaching the Meadowbrook treatment plant, raw sewage can be discharged from the Fawn Ridge lift station into the unnamed East Fork tributary of the La Moine River. The Meadowbrook system is the subject of the Complaint filed by the Agency in PCB 84-121.

Count I of the Complaint in PCB 84-121 alleged that, from May 17, 1979 until August 3, 1984 (including, but not limited to, March 26, 1982), the Respondents caused or allowed discharges causing, or threatening to cause, water pollution in violation of Section 12(a) of the Act by allowing raw sewage bypasses from the Meadowbrook system to enter the East Fork of the La Moine River and its unnamed tributary.

Count II alleged that, on the dates previously delineated in Count I, the Respondents' raw sewage bypasses from the Meadowbrook system caused violations of 35 Ill. Adm. Code 302.203, 304.105, 304.106, and 306.103(b) as well as violations of Section 12(a) of the Act.

Count III alleged that, from March 7, 1972 until January, 1981 and from October, 1983 until August 3, 1984, the Respondents operated the Meadowbrook system's treatment plant without the direct and active field supervision of Agency-certified operator

in violation of the NPDES Permits for the system, 35 Ill. Adm. Code 312.101 and Section 12(f) of the Act.

Count IV alleged that the Respondents caused or allowed the discharge of effluents in violation of the 1980 NPDES Permit for the Meadowbrook system, thereby violating 35 Ill. Adm. Code 309.102 and Section 12(f) of the Act.

Count V alleged that, from June 1975 until August 3, 1984, the Respondents: (1) failed to provide adequate facilities to measure the effluent flow discharged from the Meadowbrook treatment plant in violation of the system's NPDES Permits, 35 Ill. Adm. Code 305.103 and 309.102, and Section 12(f) of the Act, and (2) failed to monitor the effluent discharged from the treatment plant and/or submit the necessary monthly discharge monitoring reports to the Agency in violation of the system's NPDES Permits, 35 Ill. Adm. Code 305.102 and 309.102, and Section 12(f) of the Act.

Count VI alleged that the Respondents failed to report the raw sewage bypasses from the Meadowbrook system (that occurred on, but not limited to, March 26, 1982) to the Agency in violation of the system's NPDES Permits, 35 Ill. Adm. Code 305.102 and 309.102, and Section 12(f) of the Act.

Count VII alleged that the Respondents failed to provide adequate equipment such as multiple pumping units, duplicate power sources, or alarms at the Meadowbrook system's Fawn Ridge and Doe Run/Meadow Drive lift stations to minimize discharges of untreated sewage during power or equipment failure in violation of the system's NPDES Permits, 35 Ill. Adm. Code 306.102(a), and 309.102 and Section 12(f) of the Act.

A hearing was held on October 17, 1985 at which members of the public were present. (R. 4). The parties filed a Stipulation and Proposal for Settlement on October 28, 1985.

The proposed settlement agreement provided that the Atlas Service Company, Inc. admitted the violations alleged in both Complaints and agreed to: (1) transfer the Georgetown system (including all equipment and facilities) within 30 days of the date of the Board's Order to the Georgetown Homeowners' Association which shall then own, operate, and manage the system; (2) transfer the Meadowbrook system (including all equipment and facilities) within 30 days of the date of the Board's Order to the Meadowbrook Homeowners' Association which shall then own, operate and manage the system; (3) no longer engage in the operation or management of any sewage treatment plant; (4) pay a

* With respect to the restrictive covenants delineated in item #2 on page 8 of the Stipulation and in item #5 on page 9 of the Stipulation, it appears that the parties only intend to limit the rights of the Respondents to operate or manage the Georgetown and
(continued)

stipulated penalty of \$1,100.00 into the Environmental Protection Trust Fund for violations in PCB 84-120 (Georgetown system), and (5) pay a stipulated penalty of \$400.00 into the Environmental Protection Trust Fund for violations in PCB 84-121 (Meadowbrook system). (Stip. 8-9).

In their Stipulation and Proposal for Settlement, the parties have indicated that they believe that the stipulated penalties are appropriate because (1) Atlas will no longer operate the Georgetown system, the Meadowbrook system, or any other sewage treatment plant; (2) Atlas will transfer its ownership interest in the Georgetown system and the Meadowbrook system to respective homeowner associations which will then own, operate, and manage the systems; and (3) Atlas's current financial condition appears to warrant the aforementioned stipulated penalties. (Stip. 9-10; R. 5).

As part of the proposed settlement agreement, and in consideration of the agreement of Ralph Waller and Thomas Waller not to engage in the operation or management of any sewage treatment plant, the Agency has agreed to request that the Board dismiss both Ralph and Thomas Waller as Respondents in both actions. (R. 6-7; Stip. 8). The Board believes that this request is appropriate and hereby grants the Agency's motion to dismiss.

In evaluating this enforcement action and proposed settlement agreement, the Board has taken into consideration all the facts and circumstances in light of the specific criteria delineated in Section 33(c) of the Act and finds the settlement agreement acceptable under 35 Ill. Adm. Code 103.180.

The Board finds that the Respondent, the Atlas Service Company, Inc., has violated 35 Ill. Adm. Code 302.203, 302.206,

Meadowbrook systems in the near future. However, as presently worded, the restrictive covenants would appear, for all practical purposes, to indirectly bar the Respondents from ever seeking, or obtaining, appropriate certification. Moreover, the overly broad, vague, and ambiguously all-inclusive language of items #2 and #5 does not clearly or specifically limit the restriction on the Respondents' freedom of action to operate or manage the sewage treatment plants at the two subdivisions in question and does not place a reasonable time limit or geographic limit on the proposed restriction. The Board accepts this Stipulation with the understanding that the actual intent of the two agreed-upon restrictive covenant conditions is limited to precluding Ralph Waller, Thomas Waller, and the Atlas Service Company, Inc. from an operating or control relationship with the Georgetown and Meadowbrook facilities. The Board notes that the respective Homeowner Associations can effectively preclude this result without such conditions and, thus, such conditions are actually extraneous.

304.105, 304.106, 305.102, 305.103, 306.102(a), 306.103(b), 309.102 and 312.101 and Sections 12(a) and 12(f) of the Act. The Respondent will be ordered to follow the agreed-upon compliance plan and to pay a stipulated penalty of \$1,100.00 into the Environmental Protection Trust Fund in PCB 84-120 (Georgetown system) and a stipulated penalty of \$400.00 into the Environmental Protection Trust Fund in PCB 84-121 (Meadowbrook system).

This Opinion constitutes the Board's findings of fact and conclusions of law in this matter.

ORDER

It is the Order of the Illinois Pollution Control Board that:

1. Ralph Waller and Thomas Waller are hereby dismissed as Respondents in PCB 84-120 and PCB 84-121.
2. As admitted in the Stipulation, Respondent Atlas Service Company, Inc. has violated 35 Ill. Adm. Code 302.203, 302.206, 304.105, 304.106, 305.102, 305.103, 306.102(a), 306.103(b), 309.102, and 312.101 and Sections 12(a) and 12(f) of the Illinois Environmental Protection Act.
3. Within 30 days of the date of this Order, Respondent Atlas Service Company, Inc. shall:
 - (a) Transfer the Georgetown system (including all equipment and facilities) to the Georgetown Homeowners' Association which shall then own, operate and manage the system, and
 - (b) Transfer the Meadowbrook system (including all equipment and facilities) to the Meadowbrook Homeowners' Association which shall then own, operate and manage the system.
4. Atlas Service Company, Inc., Ralph Waller, and Thomas Waller shall no longer engage in the operation or management of any sewage treatment plant at either facility or any subdivision.
5. Within 30 days of the date of this Order, the Respondent Atlas Service Company, Inc. shall, by certified check or money order payable to the State of Illinois and designated for deposit into the Environmental Protection Trust Fund, pay the stipulated penalty of \$1,100.00 (for violations in PCB 84-120) and the stipulated penalty of \$400.00 (for violations in PCB 84-121) which are to be sent to:

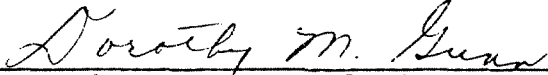
Illinois Environmental Protection Agency

Fiscal Services Division
2200 Churchill Road
Springfield, Illinois 62706

6. The Respondents shall comply with all the terms and conditions of the Stipulation and Proposal for Settlement filed on October 28, 1985, which is incorporated by reference as if fully set forth herein.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 6th day of February, 1986 by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board