

ILLINOIS POLLUTION CONTROL BOARD
November 12, 1982

ILLINOIS ENVIRONMENTAL PROTECTION)
AGENCY,)
)
Complainant,)
)
v.) PCB 81-13
)
CITY OF ARCOLA, a municipal corporation;)
FIRST NATIONAL BANK OF ARCOLA, a national)
banking association, and J. STANLEY ALLEN,)
)
Respondents.)

GWENDOLYN W. KLINGLER, ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF THE COMPLAINANT.

EMERSON L. MOORE, ATTORNEY AT LAW, APPEARED ON BEHALF OF RESPONDENT CITY OF ARCOLA.

MARK T. PETTY, ATTORNEY AT LAW, APPEARED ON BEHALF OF RESPONDENTS FIRST NATIONAL BANK OF ARCOLA AND J. STANLEY ALLEN.

OPINION AND ORDER OF THE BOARD (by N.E. Werner):

This matter comes before the Board on the January 29, 1981 Complaint brought by the Illinois Environmental Protection Agency ("Agency"). On April 8, 1981, the Agency filed a Motion for Leave to File an Amended Complaint and an Amended Complaint. The Amended Complaint alleged that the Respondents allowed the construction and operation of sewer lines without the appropriate Construction Permit and Operating Permit from the Agency in violation of Rules 951(a) and 952(a) of Chapter 3: Water Pollution Control Regulations ("Chapter 3") and Section 12(c) of the Illinois Environmental Protection Act ("Act").

A hearing was held on October 30, 1981. The parties filed a Stipulation and Proposal for Settlement on November 10, 1981 which proposed that a stipulated penalty of \$750.00 be imposed on the First National Bank of Arcola and provided that a stipulated penalty of \$500.00 be assessed against the City of Arcola. On January 7, 1982, the Board entered an Order which rejected the Stipulation. On October 18, 1982, the parties filed a second Stipulation and Proposal for Settlement ("Stip.") which called for a stipulated penalty of \$1,500.00 to be assessed against the First National Bank of Arcola and suggested that a stipulated penalty of \$750.00 should be appropriately imposed on the City of Arcola.

The First National Bank of Arcola (the "Bank"), which is a national banking association located in the City of Arcola, Douglas County, Illinois, owns the legal title as trustee under Trust #L-225 to apartment buildings located at 413 and 415 Ash Street in Arcola, Illinois (known together as the Park Place Apartments). Mr. Joseph J. McNamara and Mr. Frank L. Lesko, who each hold an undivided 50% interest, are the equitable owners under this trust. (Stip. 2). The Park Place Apartments consist of two eight-unit buildings. Each apartment unit has two bedrooms, and there are a total of 16 apartment units.

During the spring and summer of 1979, the buildings in question were constructed with the knowledge and approval of the City of Arcola (the "City"). Although the City's sewage treatment facilities had been on restricted status since 1974*, the City allowed two 6 inch sewer lines, designed to discharge more than 1,500 gallons of wastewater per day, to be constructed and connected to the sewers of the City's sanitary sewer system (which run into the City's sewage treatment plant) without the requisite Agency permits. Accordingly, the sewer lines at the Park Place Apartments have been transporting sewage into the City's sanitary sewer system since the summer of 1979.

The parties have stipulated that Mr. J. Stanley Allen ("Allen"), who was the manager of the Park Place Apartments from October 1, 1979 until April 30, 1981, "appeared on behalf of the owners and developers of the Park Place Apartments to request a zoning variance grant from the City" at the City Council meeting of November 20, 1978. (Stip. 3; Ex. A, p.3). Subsequently, on December 12, 1978, the City issued a construction permit for the two buildings. On the construction permit application submitted to the City, the Bank was listed as the owner. (Stip. 3). On May 24, 1979, the Modern Construction Company submitted a sewer service application for the apartments to the City. (Stip. 3).

Three days later, on May 27, 1979 (and again on July 6, 1979), Agency inspectors visited the construction site "and observed 6 inch sewer lines, one for each building, which were to be connected with the main sewer line for the City of Arcola". (Stip. 3). A construction permit application, which listed the bank as owner, was submitted to the Agency for these apartments on July 25, 1979. It is stipulated that, during the construction of the Park Place Apartments, Allen talked with Agency inspectors and corresponded with the Agency. (Stip. 3). Moreover, the Agency formally sent a letter "to Mr. Allen and reminded him of the need to secure an Agency permit" on August 1, 1979. (Stip. 4; Ex. B).

On August 20, 1979, the Agency denied the Bank's construction permit application on the basis that the City's sewage treatment facilities were on restricted status. (Stip. 4). Nevertheless,

* On October 1, 1981, the City's sewage treatment facilities were removed from restricted status. (Stip. 7).

on or before August 29, 1979, "connection of the two 6 inch sewer lines from each Park Place Apartment building was made to the City's sewer system". (Stip. 4). The first occupancy of the Park Place Apartments commenced in November of 1979 and both buildings have remained occupied since that time. (Stip. 4).

It is stipulated that "the application to the Agency indicated that the projected occupancy for each building was 24 persons, for an average of 3 persons per apartment". (Stip. 5). Accordingly, the projected intended discharge from each building would be 2,400 gallons per day, using 100 gallons of sewage a day per person (i.e., one population equivalent) as a standard. (Stip. 4). However, the actual water usage has been substantially less than projected. (Stip. 6-7).

The Park Place Apartments sustained a loss of \$27,099.00 in the calendar year 1979; a loss of \$26,259.00 in 1980; and a loss of \$21,402.00 in 1981. (Stip., Ex. E). During the first full year that property taxes were assessed with the two buildings finished (i.e., 1980), the Park Place Apartments paid \$5,516.30 in property taxes. (Stip., Ex. D).

In reference to the financial benefits which accrued to the City of Arcola in connection with the construction of the two apartment buildings, the City's attorney indicated that, in addition to the City's share of the 1980 property taxes (which was approximately 15% or about \$ 827.00), the City collected \$1,396.00 in fees which included: (1) \$206.00 for two sewer connections (one to each building); (2) \$630.00 for two water line connections and the placing of meters (one to each building); and (3) \$560.00 in building permit fees for the two buildings. (Stip., Ex. D).

The proposed settlement agreement provides that the Respondents admit the allegations in the Amended Complaint and that: (1) the Bank agrees to promptly submit "an application for the construction and operation of the sewer lines for the Park Place Apartments" (including "as built" plans for the sewers) to the Permit Section of the Agency within 30 days of the date of the Board Order in this case; (2) the Bank agrees to pay a stipulated penalty of \$1500.00; and (3) the City agrees to pay a stipulated penalty of \$750.00. (Stip. 8-9). Additionally, the parties have indicated that they believe that no penalty should be assessed against Mr. J. Stanley Allen.

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. The Board finds the settlement agreement acceptable under Procedural Rule 331 and Section 33(c) of the Act.

The Board finds that the Respondents have violated Rules 951(a) and 952(a) of Chapter 3: Water Pollution Control Regu-

lations and Section 12(c) of the Act. The stipulated penalty of \$1500.00 will be assessed against the First National Bank of Arcola, and a stipulated penalty of \$750.00 will be imposed on the City of Arcola. No penalty will be assessed against Respondent Allen.

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. Respondents City of Arcola, a municipal corporation; First National Bank of Arcola, a national banking association, and J. Stanley Allen have violated Rules 951(a) and 952(a) of Chapter 3: Water Pollution Control Regulations and Section 12(c) of the Illinois Environmental Protection Act.

2. Within 45 days of the date of this Order, Respondents First National Bank of Arcola and the City of Arcola shall, by certified check or money order payable to the State of Illinois, pay their respective stipulated penalties of \$1,500.00 and \$750.00, which are to be sent to:


Illinois Environmental Protection Agency
Fiscal Services Division
2200 Churchill Road
Springfield, Illinois 62706

3. No penalty shall be assessed against Respondent J. Stanley Allen.

4. The Respondents shall comply with all the terms and conditions of the second Stipulation and Proposal for Settlement filed on October 18, 1982, which is incorporated by reference as if fully set forth herein.

Mr. I. Goodman concurs. Mrs. J. Anderson and Mr. D. Anderson dissent.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order were adopted on the 12th day of November, 1982 by a vote of 3-2.



Christan L. Moffett, Clerk
Illinois Pollution Control Board