

ILLINOIS POLLUTION CONTROL BOARD
May 14, 1981

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Petitioner,)
)
 v.) PCB 80-112
)
 PETER OCCHIPINTI,)
)
 Respondent.)

ORDER OF THE BOARD (by I. Goodman):

On April 17, 1981 Respondent moved the Board to delete Paragraph 2 of its Order of March 19, 1981, citing several arguments. On April 23, 1981, Complainant responded and moved the Board to clarify its Opinion of March 19, 1981 with respect to the term "misrepresented".

Paragraph 2 of the Order, which directs Respondent to install holding tanks of a design and capacity to be determined by the Illinois Environmental Protection Agency, was imposed in balancing the financial burden of the Respondent with the constitutional and other rights of affected citizens to a healthy environment pursuant to §33 of the Illinois Environmental Protection Act (Act). The paragraph has the further effect of mitigating against the Board's revocation of Respondent's permit.

Respondent cites an inability to install the tanks due to the Village of Lombard's alleged refusal to approve their installation. These holding tanks will not only minimize backups to neighboring homes, but decrease wet weather load on the Village's treatment plant. Although Respondent disputes the Board's finding that an ordinary person could reasonably expect an overload and backup problem under the facts of this case, alleging the finding to be inconsistent with reasonable engineering criteria, the finding was not solely based on technical evidence, but included the common sense recognition that a 12-inch pipe may not flow freely at all times when many pipes connect to it, one of which is of the same 12-inch diameter. The Board agrees with Complainant that Respondent's exhibits to its motion were improperly appended; such evidence was not a part of the record in this proceeding and is therefore immaterial and irrelevant to the Board's Opinion of March 19, 1981. As to the Order, however, the Board accepts the exhibits as evidence of the feasibility of complying with Paragraph 2.

Although the Board denies Respondent's motion to delete Paragraph 2 of its Order, it will amend that Paragraph to allow Respondent to, in lieu of installing holding tanks, timely submit to Complainant a plan, to the complete satisfaction of Complainant,

to reduce the pollution. However, the instant matter is an enforcement action and not a grant of variance. Further delay in cleaning up the pollution is not warranted, and the Board will set a deadline for the submission of an alternative plan.

Respondent's other arguments are of no merit; that the cost of the holding tanks cannot justify their benefits was not under consideration in the record of this enforcement case, and reliance upon a previous permit is immaterial to the duty to make true statements of fact in permit applications.

The Board declines to require of Respondent a performance bond and also declines to revoke the permit pursuant to §33 of the Act.

As to the Agency's concern with the Board's use of the term "misrepresented," the Board need not make, and did not here, a finding as to state of mind, as state of mind is immaterial to a finding of whether facts in a permit application are true. The Agency itself had pleaded the irrelevancy of intent to the issue of whether the permit should be revoked (People's Reply Brief, p.5). If the meaning of the term in the phrase "Occhipinti misrepresented the condition of the downstream sewers ... in his permit application" is "unclear from a reading of the Opinion," since one might choose to "infer that the Board interpreted the term ... to include some state of mind accompanying Occhipinti's act of submitting incorrect information in his permit application," the Board cites the Agency to Webster's Dictionary and not tort law principles.

The Agency's final plea to clarify the elements of a prima facie case for the Board's revocation of Respondent's permit is answered by reference to §33 of the Act which calls for the Board's consideration of a number of facts in finding violations and in drafting its Orders.

It is the Order of the Illinois Pollution Control Board that Paragraph 2 of the Order of March 19, 1981 be amended to read as follows:

2. Peter Occhipinti shall install one or more holding tanks of a design and capacity to be determined by the Illinois Environmental Protection Agency so as to restrict flow to the sanitary sewer system of the Village of Lombard during rainstorms. In the alternative, Peter Occhipinti shall submit an alternative plan for the same purpose to the Illinois Environmental Protection Agency on or before July 17, 1981 and shall abide by the Agency's determination regarding said plan.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 14th day of May, 1981 by a vote of 5-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board