

ILLINOIS POLLUTION CONTROL BOARD
April 12, 1979

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) PCB 77-275
)
RALPH KORTE CONSTRUCTION CO., INC.,)
a Delaware corporation,)
)
Respondent.)

MR. REED W. NEUMAN, ASSISTANT ATTORNEY GENERAL, APPEARED ON
BEHALF OF THE COMPLAINANT.

MATEYKA AND HILL, ATTORNEYS AT LAW (MR. THOMAS A. HILL, OF
COUNSEL), APPEARED ON BEHALF OF THE RESPONDENT.

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

This matter comes before the Board on the October 25, 1977 Complaint brought by the Illinois Environmental Protection Agency ("Agency"). On November 9, 1977, the Respondent filed a Motion to Dismiss the Complaint. On November 17, 1977, the Complainant filed an Objection to the Respondent's Motion to Dismiss based on the rationale that it had cured the defective Complaint by its Motion to Amend the Complaint which was concurrently filed on November 17, 1977. On November 23, 1977, the Board denied the Respondent's Motion to Dismiss and granted the Complainant's Motion to Amend the Complaint. On December 16, 1977, the Agency filed a Motion for Leave to File a Second Amended Complaint, and the Board granted this motion on December 20, 1977. The Second Amended Complaint alleged that the Respondent violated Rule 951(a) and Rule 952(b) of Chapter 3: Water Pollution Regulations ("Chapter 3") and Section 12(b) of the Illinois Environmental Protection Act ("Act") by causing or allowing the construction and operation of specified sewer systems since November 22, 1974 without first having obtained the requisite Agency permits. The Second Amended Complaint also alleged that, on April 1, 1977, the Respondent violated Rule 201A of Chapter 6: Public Water Supply Regulations and Section 15 of the Act by causing or allowing the construction of a water main extension without first having obtained the necessary Agency permit. On March 22, 1978,

the parties filed a Joint Motion for a Stay of Hearing in this case until no later than 30 days after the issuance on a final Board Order on a Variance Petition to be filed by the Respondent, and the Board granted this motion on March 30, 1978. On June 2, 1978, the Complainant filed a motion that requested the Board to set aside its prior Order dated March 30, 1978 which stayed the hearing in this case, and the Board granted this motion on June 22, 1978. A hearing was held on February 27, 1979. The parties filed a Stipulation and Proposal for Settlement on March 1, 1979. The Stipulation of Facts indicated that the parties agree that the Complainant should be allowed to amend instanter its Second Amended Complaint so that all references to "Rule 210A" of the Board's Public Water Supply Regulations should be changed to "Rule 201A." (Stip. 2). Accordingly, the Board hereby grants the Complainant's motion to correct the typographical error pertaining to Rule 201A of Chapter 6: Public Water Supplies.

The Respondent, Ralph Korte Construction Co., Inc. ("Korte"), is a corporation organized under the laws of the State of Delaware, and is authorized to do business in the State of Illinois. On April 1, 1977, the Respondent constructed a water main extension to the City of Highland, Illinois, public water supply. This extension consists of approximately three hundred (300) feet of pipe and is located in an area known as M. Matter Second Subdivision in the City of Highland. (Stip. 2). Prior to the filing of the Complaint in this matter, Respondent had not been issued a permit by the Agency to construct this water main extension, as required by Rule 201A of Chapter 6: Public Water Supplies ("Chapter 6"). The Agency first became aware of the existence of the water main extension as the result of a water main break which occurred on May 7, 1977. (Stip. 2-3).

Sometime after November 1, 1974, the Respondent constructed and allowed the use or operation of a sewer system located near U.S. Route 40 in the City of Highland, consisting of approximately 1100 feet of eight inch pipe and five manholes, which transports wastewater from the Ralph Korte Construction Company building, two trucking company buildings, and a mini-warehouse facility to the City of Highland sewage system. (Stip. 3). Moreover, sometime after November 1, 1974, Korte constructed and allowed the use or operation of a sewer system, consisting of approximately 1000 feet of eight inch pipe, four manholes and a lift station, located south of U.S. Route 40 in the City of Highland, in an area known as M. Matter Subdivision which transports wastewater from Dowell Industrial Supply, Ultralife Laboratories and Ralph Ethridge Sports, Inc. (Stip. 3). Additionally, sometime after November 1, 1974, the Respondent constructed a sewer system, designed to carry wastewater, consisting of approximately 800 feet of eight and ten inch pipe

and located north of Illinois Route 143 in the City of Highland, in an area known as Northtown East Executive Park. However, prior to the filing of the Complaint in this matter, the Respondent had not been issued either Construction or Operating Permits by the Agency for any of the previously described sewer systems. (Stip. 3).

On February 29, 1969, the Illinois Sanitary Water Board, in a letter to the City of Highland, placed the City's treatment plant on restricted status, saying no further extensions or hook-ups to the City's sewer system would be allowed until the treatment system was modified to create adequate capacity for the needs of City residents. That restricted status, ordered again by the Agency in 1971, has remained in effect at all times relevant to this case. (Stip. 4). On October 22, 1974, the Respondent received a letter from the Agency's Division of Water Pollution Control, Permit Section, denying Respondent's application for permits for the sewer systems in question, because the City of Highland remained on restricted status. On December 27, 1974, Korte received a letter from the Director of the Agency explaining that the permit denial letter was necessitated by the City's continuing restricted status. (Stip. 4).

The Sewer systems described above apparently were constructed with the knowledge and acquiescence of City officials in Highland, and the City has been charging sewer usage fees to those businesses connected since the time of their connection to the sewer system. Under existing Board rules, each business apparently could have connected to the system individually without needing Agency construction or operating permits. (Stip. 4). The City of Highland has completed construction of a new sewage treatment plant to ease the overloading problem; and the restricted status has recently been removed by the Agency. Because the Respondent was unable to obtain permits for the sewers in the face of the sewer ban, the Respondent was compelled to seek a Variance to use these sewer systems. In a related proceeding, Korte v. EPA, PCB 78-103 (July 20, 1978), the Respondent was granted a Variance from Rule 962 of Chapter 3: Water Pollution Regulations. (Stip. 5).

For purposes of the proposed settlement only, the parties have stipulated that the Respondent caused or allowed the violations alleged in each of Counts I and II of the Second Amended Complaint. Subsequent to the filing of this Complaint, the Respondent, per agreement with the Agency, submitted as-built plans and 4 water samples pertaining to the water main extension to the City of Highland public water supply. Based on this information, the Agency on August 3, 1978 issued Operating Permit #3-FY1979 for the water main extension. (Stip. 6). Also subsequent to the filing of the Complaint in this matter, and after the issuance of the Board's Order of July 20, 1978 granting

a variance in PCB 78-103, the Respondent was issued Operating Permit #1978-IA-2015 by the Agency on October 4, 1978 for its sewer systems. To this date, no Operating Permit has been issued, although a permit application was submitted to the Agency pertaining to one of the sewer systems. (Stip. 6).

The proposed settlement agreement provides that the Respondent agrees to admit the violations as charged in Count I of the Second Amended Complaint and agrees to pay a stipulated penalty of \$2,500 for the violations of Count I. Additionally, the Respondent agrees to admit violating Section 15 of the Act and Rule 201A of Chapter 6: Public Water Supply Regulations as charged in Count II of the Second Amended Complaint and agrees to pay a stipulated penalty of \$500 for these violations.

In evaluating this enforcement action and proposed settlement, the Board has taken into consideration all the facts and circumstances in light of the specific criteria delineated in Section 33(c) of the Illinois Environmental Protection Act. The Board finds the stipulated agreement acceptable under Procedural Rule 331 and Section 33(c) of the Act. The Board finds that the Respondent, Ralph Korte Construction Co., Inc., has violated Rule 951(a) and Rule 952(b) of Chapter 3: Water Pollution Regulations and Section 12(b) of the Act; and has violated Rule 201A of Chapter 6: Public Water Supply Regulations and Section 15 of the Act. Accordingly, the Respondent shall pay the stipulated penalty of \$3,000 for these violations.

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. The Respondent has violated Rule 951(a) and Rule 952(b) of Chapter 3: Water Pollution Regulations and Section 12(b) of the Act; and has violated Rule 201A of Chapter 6: Public Water Supply Regulations and Section 15 of the Act.
2. Within 45 days of the date of this Order, the Respondent shall pay the stipulated penalty of \$3,000 , payment to be made by certified check or money order to:

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

3. The Respondent shall comply with all the terms and conditions of the Stipulation and Proposal for Settlement filed March 1, 1979, which is incorporated by reference as if fully set forth herein.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 12th day of April, 1979 by a vote of 5-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board