

ILLINOIS POLLUTION CONTROL BOARD
November 30, 1978

ENVIRONMENTAL PROTECTION AGENCY,)
)
) Complainant,)
))
) v.) PCB 78-209
))
JACK MERKIN,)
))
) Respondent.)

MR. JOHN VAN VRANKEN, ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF COMPLAINANT.
MR. JAMES K. POWLESS APPEARED ON BEHALF OF RESPONDENT.

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

The Environmental Protection Agency (Agency) filed a Complaint against Jack Merkin on August 3, 1978. The Complaint alleged that Mr. Merkin constructed and operated a sewer system near the Village of Crainville, Williamson County, Illinois, without a permit from the Agency, in violation of Sections 12(b) and 12(c) of the Environmental Protection Act (Act), and never submitted to the Agency any plans, engineer's report or specifications for said sewer system, in violation of several of the Sanitary Water Board Rules. A hearing was held in this matter on October 12, 1978, in Crainville. No citizen witnesses appeared at the hearing. The Board notes that Mr. Merkin filed a Motion to Dismiss the Complaint filed herein. The Board finds no merit to the Motion and hereby denies it.

Complainant's Exhibit No. 1 in this proceeding is a Request to Admit Facts, which was served upon Mr. Merkin by the Agency but was not answered. Under Procedural Rule 314, any matter not denied is admitted. At the hearing, Mr. Merkin did not refute any of the admitted facts.

The admitted facts are that in December, 1971, Mr. Merkin owned an area known as "Ten Oaks Estates," which included several apartment buildings. Mr. Merkin developed the area and paid Freeburg Construction Company to construct a sewer system to serve the "Ten Oaks Estates." The sewer system, which includes force mains and a lift station, is connected to the Village of Crainville sewer system. Mr. Merkin admits that the Agency never issued him a permit to construct or a permit to operate said sewer system and that he never submitted any plans, an engineer's report, or complete technical

specifications for said sewer system. The Board, therefore, finds that Mr. Merkin constructed and operated a sewer system without the required permits from the Agency, in violation of Sections 12(b) and 12(c) of the Act. Mr. Merkin furthermore failed to submit an engineer's report, plans, and technical specifications to the Agency, in violation of Sanitary Water Board Rules 11.1, 12.21, 12.22, 12.31, 12.32, and 13.

Aside from introducing the Request to Admit Facts, the Agency submitted no evidence at the hearing. Mr. Merkin presented mitigating testimony. He testified that he attempted to obtain the permits he believed were required. He stated that Freeburg Construction Co. was constructing the sewer system for the Village of Crainville and approached Mr. Merkin about connecting to that system. Mr. Merkin stated that he obtained a permit from the Village of Crainville to construct a lift station and understood that upon completion it would be owned by the Village and he would pay a monthly service charge (R.10). Mr. Merkin applied for a permit to the Franklin/Williamson Bi-County Health Department but was told he did not need a permit but merely needed the authority of the municipality to which he was connecting (R.11). Mr. Merkin also testified that he understood that it was the obligation of the Village of Crainville to apply to the Agency for permission to construct and operate the sewer system (R.13, 16). In February of 1975, Mr. Merkin filed for bankruptcy. In July of 1975, his properties, including "Ten Oaks Estates," were turned over to the Trustee in Bankruptcy, and since that time he has had no control over the property.

As to the factors outlined in Section 33(c) of the Act, we find that failure to obtain necessary permits and submit necessary information threatens the integrity of the environmental program in Illinois. Certainly a sewer system is of great social value, but that value is diminished when the procedures intended to safeguard the environment are neglected. However, the Board finds the testimony presented by Mr. Merkin as to his efforts to obtain what he believed to be the required permits and as to his bankruptcy mitigate against imposition of a penalty. We will therefore not impose a penalty for the violations found herein.

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

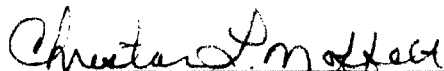
ORDER

It is the Order of the Pollution Control Board that:

1. Jack Merkin is found to have constructed and operated a sewer system serving the "Ten Oaks Estates" without the required permits from the Environmental Protection Agency, in violation of Sections 12(b) and 12(c) of the Environmental Protection Act;
2. Jack Merkin is found to have violated Sanitary Water Board Rules 11.1, 12.21, 12.22, 12.31, 12.32, and 13;
3. The Motion to Dismiss filed by Jack Merkin is hereby denied.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 30th day of November, 1978 by a vote of 50.



Christan L. Moffett, Clerk
Illinois Pollution Control Board