

ILLINOIS POLLUTION CONTROL BOARD  
March 28, 1974

ENVIRONMENTAL PROTECTION AGENCY )  
COMPLAINANT )  
)  
)  
v. ) PCB 73-422  
)  
)  
THE CITY OF ARCOLA )  
RESPONDENT )

THE CITY OF ARCOLA )  
COMPLAINANT )  
)  
)  
v. ) PCB 73-461  
)  
)  
ENVIRONMENTAL PROTECTION AGENCY )  
RESPONDENT )  
)

DALE TURNER, ASSISTANT ATTORNEY GENERAL, STEPHEN GUNNING in behalf of  
the ENVIRONMENTAL PROTECTION AGENCY  
MR. JAMES LEMNA, in behalf of the CITY OF ARCOLA, and MR. THOMAS J.  
LOGUE, appearing for intervenors

OPINION AND ORDER OF THE BOARD (by Mr. Marder)

Environmental Protection Agency v. City of Arcola, PCB 73-422,  
comes to the Board on complaint filed October 3, 1973, by the Environ-  
mental Protection Agency. Complaint alleges that a permit for water  
main extension to the water system of the city of Arcola was denied on  
March 1, 1973. It was again denied on a re-petition on April 23, 1973.  
The reason alleged for denial is an inadequate supply of water in the  
Arcola aquifer to supply the needs of the town and a new development  
to be built on the outskirts of Arcola. The water main in question is  
alleged to have been completed by July 23, 1973, such construction  
having taken place without a permit's having been issued by the En-  
vironmental Protection Agency. Such construction would be a violation  
of Section 15 of the Environmental Protection Act.

City of Arcola v. Environmental Protection Agency, PCB 73-461, is  
a permit appeal case filed by the city of Arcola with the Board on Nov-  
ember 1, 1973. The permit appeal petition alleges denial of the con-  
struction permit was unreasonable and not based on the facts that ex-  
isted at the time of the application. On December 3, 1973, the city of  
Arcola waived its rights to have this matter decided within 90 days of  
filing. On March 25, 1974, the city of Arcola filed a motion to dismiss

this case without prejudice. This motion is hereby granted. A third petition was filed in this matter on November 1, 1973. It was in the form of a variance petition filed by Michael E. Martin, Kenneth E. Webb, Jack Zimmerman, and John C. Huffer, a partnership, d/b/a JMJ Enterprises. This petition, which was originally given Docket Number 73-513, requested equitable remedies from the Board, the allegation being made that the Petitioners were innocent parties in the dispute between the Agency and the city of Arcola and would suffer grave financial hardships. On January 3, 1974, the Board ordered all three cases consolidated for hearing. On January 31, 1974, the Board ordered that the petition for variance be dismissed without prejudice and be considered a petition for intervention in the matter of City of Arcola v. Environmental Protection Agency, PCB 73-461, and intervention was allowed.

Hearings were held on February 6, 1974, and February 14, 1974, at the Douglas County Courthouse, Tuscola, Illinois. Statements and a proposed order were filed by the parties jointly on March 11, 1974.

The pertinent section of the Agency's complaint reads as follows:

"That the city began construction on the abovementioned water main extension without written approval of the Agency and after the Agency had specifically stated in writing that such approval could not be granted, and has thus violated and continued to violate at least until the filing of this complaint, Section 15 of the Environmental Protection Act."

Section 15 of the Act reads as follows:

"Owners of public water supplies, their authorized representatives, or legal custodians shall submit plans and specifications to the Agency and obtain written approval before construction of any public water supply installation, changes, or additions is started..."

It is stipulated by the parties that the city of Arcola violated Sec. 15 of the Environmental Protection Act, in that a water main extension was installed prior to obtaining an Environmental Protection Agency permit (P. 2 of Statement filed March 11, 1974).

The water main extension was laid to service a motel and restaurant complex on the outskirts of the city. The motel built on the site is 80% completed, with a total projected cost of \$1,100,000. There is interest on the money due for the project, which at the February 6th hearing was \$7,891.95. On June 28, 1973, the developers had received a letter from the city of Arcola saying that water would be available at the site. They relied on this letter from the city of Arcola and continued construction. This complex will employ approximately 70 people and will be one of the largest employers in the Arcola area. The motel will use 5000 gallons of water per day. It is on an unsuitable site for well drilling and there is no alternate source of water available on the site. The city will not allow a connection into their water supply system at

this time (R. 60-81).

The Environmental Protection Agency filed an agreed motion on March 25, 1974, to admit to the record the affidavit of Roger Selburg of the Agency. This motion is granted. The affidavit states that Mr. Selburg is manager of the Permit Section of the Division of Public Water Supply of the Agency. It further states that Mr. Selburg has seen and examined the proposed order of the parties and believes that implementation of this order would not result in environmental damage or unwarranted disruption of the aquifer presently serving the city of Arcola.

It appears from the record that there is adequate water to supply the motel complex that is serviced by the water main extension (affidavit of Mr. Selburg). The record further shows a measure of concern by the city of Arcola and the Agency for a water supply to meet the city's future needs (R. 96). The city has entered into negotiations with the Eastern Illinois Water Company of Robinson, Illinois. In agreeing to settle this enforcement matter, the Agency has proposed and the city has agreed to certain conditions as consideration for prompt settlement. These conditions will be incorporated as the Order of the Board.

Enforcement actions involving a public water supply involve a different kind of resolution than the average case. Here the Board must weigh the value of having a water supply that is in violation as compared to having no water supply at all.

The major problem here is that of guaranteeing an adequate water supply to the city of Arcola in the future. The parties here have worked out a proposed order that takes into account any short-term problem the city may have with its water supply, while proposing to take care of the long-term problem as expeditiously as possible with Agency supervision. The Board finds this settlement order adequate.

In their agreed order, Order Number 6 proposed by the parties stated that there shall be no additional tap on or connection of greater than 500 g.p.d. to the water system without approval of the Agency. The Board cannot issue such an order. Sec. 33 (c) (iv) of the Act states as follows:

"Whenever a proceeding before the Board may affect the right of the public individually or collectively to the use of a community sewer or water facilities provided by a municipally owned, or publicly regulated company, the Board shall at least 30 days prior to the scheduled date of the first hearing in such proceeding, give notice of the date, time, place and purpose of such hearing, by public advertisement in a newspaper of general circulation in the area of the state concerned. The Board shall conduct a full and complete hearing into the social and economic impact which would result from restriction or denial of the right to use such facilities and allow all persons claiming an interest to intervene and present evidence of social and economic impact."

This procedure was not followed in this case, and as such, proposed Order Number 6 cannot be entered.

Should the Environmental Protection Agency feel the need for such a restriction on the city water system, it may bring an action before the Board, which will be held according to the mandate of Sec. 33 (c) (iv).

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

ORDER

IT IS THE ORDER of the Pollution Control Board that:

- 1) The motion of the City of Arcola to dismiss PCB 73-461 without prejudice is granted.
- 2) The motion of the Environmental Protection Agency to admit the affidavit of Roger Selburg to the record is granted.
- 3) The City of Arcola shall continue negotiations with Eastern Illinois Water Company to obtain a contract to supply an adequate quantity of water; the aforesaid contract to be entered into within twelve months from adoption of this Order.
- 4) If the aforementioned contract for supply of water is obtained within the twelve months, the City of Arcola shall have an additional twelve months to physically obtain the additional water.
- 5) If no agreement as previously described is obtained within twelve months of adoption of this Order, then the City of Arcola shall within an additional six months (18 months from Board Order) provide an additional source of water from a source approved by the Environmental Protection Agency.
- 6) The City of Arcola shall provide a surety bond in the amount of \$20,000 to assure its obligation of Paragraph Five of this Order to provide water if a contract as described within Paragraph Three is not obtained.
- 7) The City of Arcola shall be permitted to supply water to the Schrock Industrial Park for the use of the motel, restaurant, and gas station presently under construction.
- 8) The City of Arcola shall pay a penalty in the amount of \$250.00 within 35 days after adoption of this Order. Said penalty payable by certified check to the State of Illinois, Fiscal Services Division, Environmental Protection Agency, 2200 Churchill Road, Springfield, Illinois 62706.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, certify that the above Opinion and Order was adopted by the Board on the 28th day of March, 1974, by a vote of 5 to 0.

Christan L. Moffett