

ILLINOIS POLLUTION CONTROL BOARD
September 13, 1973

ENVIRONMENTAL PROTECTION AGENCY,)
)
 Complainant,)
)
 v.) PCB 72-241
)
 ABAM BUILDING CORPORATION,)
)
 Respondent.)

Steven C. Bonaguidi, Assistant Attorney General, on behalf of Complainant;
Albert J. Armonda, on behalf of Respondent.

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

On June 14, 1972, the Agency filed complaint against Respondent, ABAM Building Corporation, the owner and operator of the ABAM Shopping Center located near Northbrook, Cook County, Illinois. The Agency alleges that Respondent has caused or allowed the discharge of sewage from its septic system into a storm drain which discharges into a roadside ditch which flows into the Skokie Lagoons so as to cause or tend to cause water pollution in violation of Section 12 (a) of the Environmental Protection Act.

More specifically, the Agency charges that the alleged discharge from Respondent's septic system contains substances which settle and form putrescent or otherwise objectionable sludge deposits and, further, that the alleged discharge contains substances which cause obvious color, odor and turbidity in violation of Rules 1.03 (a), 1.03 (c), 1.08, 10 (b) (1) and 10 (b) (3) of the Illinois Sanitary Water Board Rules and Regulations SWB-14.

Respondent has been the owner of ABAM Shopping Center for approximately twelve years. An existing septic system was on site and in operation when Respondent took possession of the premises. At that time, there were no sewers in the area and all of the landowners in the vicinity employed septic systems.

At some point during the Fall of 1970, Respondent's septic tank ruptured or otherwise ceased to function properly.

Respondent thereupon engaged the services of a plumbing contractor, James DiPietro, to alleviate the problem (6-20-73 R.93). Mr. Martin L. Samuels, an engineer, was also retained by Respondent. On the advice of Messrs. Samuels and DiPietro, the septic tank was sealed off and plugged (6-22-73 R.71) and one Castlebury was employed to pump out the septic tank as it filled. This pumping procedure continued for a period of approximately 18 months at a frequency which varied from one to five times per week as the volume of flow dictated (6-20-73 R.97).

During this period, Respondent was attempting to obtain permission for a sewer hook-up which would dispense with the need for its septic system. Respondent's first procedure was to contact the Cook County Board of Health because the septic system was originally under their jurisdiction (6-22-73 R.86). Respondent designed the requisite package plan and submitted same to the Cook County Board of Health and also to the Metropolitan Sanitary District (6-22-73 R.88). The Metropolitan Sanitary District approved the plan in mid 1971 (6-22-73 R.88).

At this point the Village of Northbrook advised Respondent that the Village would not permit the planned discharge into its storm sewer. It is alleged by Respondent's witness, Mr. Samuels, that the Village attempted to interfere with the plan approved by the Metropolitan Sanitary District in order to coerce annexation of Respondent's property to the Village (6-22-73 R.91). Regardless of the truth of this allegation, further negotiations with the Village resulted in permission for Respondent to connect to an existing sanitary sewer of the Village, and such has been accomplished (6-22-73 R.92).

The hearing on this cause extended to two full days. The Agency presented a detailed and exhaustive case in support of its allegations. Its evidence took the form of expert testimony, water samples, dye tests and diagrams. The Board is convinced, particularly from the results of Agency-conducted Fluorescein dye tests, that Respondent's malfunctioning septic tank caused water pollution either alone or in combination with contaminants from other sources, although neither the actual magnitude nor frequency of such violations is ascertainable from the record. In addition, at least one instance of violation was attested to by Respondent's witness Mr. Samuels (6-22-73 R.111), and counsel for Respondent in his closing argument stated that "we will admit at various times there may have been some slight discharge which we strongly attempted to prevent at all times" (6-22-73 R.166).

Further, this Board is satisfied, from the record, that Respondent has exercised good faith and diligence in its attempt to alleviate the violative condition and that the delay in achieving a sewer connection is not attributable to Respondent. Respondent has expended approximately \$40,000.00 in order to solve its problem and violations of the nature found herein cannot recur (6-22-73 R.165). We feel that a penalty under the fact situation found would serve no purpose and none shall be assessed.

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 Respondent, ABAM Building Corporation, shall cease and desist from the violations found herein and refrain from any operation of the subject septic system without prior Agency approval.

Mr. Odell abstains.

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 13th day of September, 1973, by a vote of 3 to 0.

Christan L. Moffett

