

ILLINOIS POLLUTION CONTROL BOARD  
January 24, 1980

ENVIRONMENTAL PROTECTION AGENCY, )  
 )  
 Complainant, )  
 )  
 v. ) PCB 78-102  
 )  
 DENNIS M. DOUGHERTY; RIDGEWOOD, )  
 INC., a Delaware corporation; )  
 ARCADE ENTERPRISES, INC., a )  
 Delaware corporation, )  
 )  
 Respondents. )

MR. STEPHEN GROSSMARK, ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF THE COMPLAINANT.

MR. DONALD J. DOUGHERTY APPEARED PRO SE AND ON BEHALF OF THE RESPONDENTS.

OPINION AND ORDER OF THE BOARD (by Dr. Satchell):

This matter comes before the Board upon a complaint filed April 17, 1978 by the Environmental Protection Agency (Agency) naming as Respondents Ridgewood, Inc. (Ridgewood) and Arcade Enterprises, Inc. (Arcade), Delaware corporations authorized to do business in Illinois, and Dennis M. Dougherty. An amended complaint was filed on March 15, 1979 adding Respondents Robert S. Tansey (Tansey) and Donald J. Dougherty (Dougherty). The complaint charges violations of §12(b) of the Environmental Protection Act (Act) and Rules 951(a) and 952(a) of Chapter 3: Water Pollution, alleging construction and operation of an unpermitted sewer extension in Caseyville Township, St. Clair County. A hearing was held in Belleville on November 14, 1979. No public comment was received.

Donald J. Dougherty appeared for himself and the other Respondents (R. 1, 127, 131). Dougherty, Tansey and Dennis M. Dougherty are officers and/or directors of Arcade and Ridgewood. There is some confusion in the record as to the exact relationships (R. 6, 18, 20, 124, 128). Together they are involved in the development of a 187 acre tract adjacent to a sewerage service area operated by the Caseyville Township Sanitation System (Caseyville) (R. 4). Dennis M. Dougherty may have been the holder of record title of six lots which were to be served by the sewer extension (R. 8). However, there appears to be no dispute by any Respondent as to responsibility for the construction which was undertaken (R. 12, Comp. Ex. 1).

The proposed development is called Ridgewood Estates and will involve 250 residential building lots (Resp. Ex. 3). Respondents planned to construct a sewage treatment plant (STP) for the development and transfer it to Caseyville (R. 8, 54). Respondents held two meetings with the Agency to discuss the development. The first was in Springfield on December 28, 1976 (R. 64, 69, 96). The second was in Collinsville on February 24, 1977 (R. 39, 48, 63, 62, 96, 99). Neither of these meetings resulted in a permit or application. In the summer of 1977 Respondents built six model homes. They proposed to connect them to a new sewer leading to a wet well. They sought agreement from Caseyville to periodically pump this wet well and transport the sewage to their plant for treatment. They appeared before the Caseyville Board on August 4, 1977 (R. 72, 78, 97, 110, 112, 117, 123, 128, 130, 136). On September 1, 1977 Agency inspectors found three manholes and approximately 1000 feet of sewer nearly complete (R. 28, 42, 57, 61; Comp. Ex. 2). No permits were issued by the Agency for the construction (R. 69, 73, 123). Agency approval was required because the extension was to serve more than fifteen population equivalents (15 PE).

The individual Respondents admit that they constructed the sewers without the necessary permits (R. 25, 131, 141; Comp. Ex. 1). Dennis M. Dougherty did not appear at the hearing although he was served with notice to appear. The Board finds all the Respondents in violation of the Act and Rules substantially as alleged in Count I of the complaint.

On August 14, 1977 Respondents submitted an Agency permit application to Caseyville (R. 100, 108, 111, 118, 121, 123; Resp. Ex. 3). Respondents contend that they believed that the construction undertaken required only Caseyville's approval and that they had only to submit an Agency application to Caseyville to be forwarded to the Agency (R. 111, 118). They believed that construction of the temporary system for the model homes could be undertaken without Agency approval (R. 70, 78). Witnesses testified that they had advised Respondents of the permit requirement prior to the construction (R. 48, 54, 57). In support of their position Respondents point out that Caseyville inspected the work while it was in progress. However, Mr. Blaies, manager of the Caseyville Township Sewage Treatment Facility, testified that this was only to be fair to Respondents to assure that the line, although illegal, was well constructed and would not have to be dug up later (R. 77).

Dougherty apparently contends that Caseyville approved the temporary system dependent on delivery of the sewer plant to it. There is a dialogue in the record suggesting that Caseyville withdrew its approval not because the temporary system was unpermitted but after learning that the contract to build the plant was not firm (R. 79). Even if this were established it would be evidence of Caseyville's involvement but would not exculpate Respondents.

Subsequent to the events of September, 1977 an Agency inspection revealed subsidence around one of the manholes (R. 35, 45, 49). Agency samples, which were not introduced into evidence, were inconclusive (R. 37, 45, 49). According to Respondents the subsidence has been filled and the sewer plugged and rendered inoperative. None of the homes has been connected to the sewer (R. 116). Since there is no evidence of operation of the sewers, Count II of the complaint is dismissed.

The Board will order Respondents to cease and desist construction of the sewer in question until such time as the Agency issues the necessary permits. The Board notes that Respondents have spent \$20,000 on construction of these sewers and have built six houses which they cannot connect (R. 142). It is not clear from the record whether or not this construction could have been permitted. In entering its Order the Board has considered §33(c) of the Act. Although Respondents have not actually caused any pollution, haphazard development of sewer systems poses a serious threat to the health and general welfare (R. 131). There is no question of suitability of the site to the area. Although there is social and economic value, it is reduced by the lack of a permit. It is technically practicable and economically reasonable to require developers to obtain permits prior to sewer construction. Respondents have raised no claims of financial hardship (R. 9, 132). Having considered the above, the Board finds that a monetary penalty of \$1000 is necessary to aid enforcement of the Act.

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

#### ORDER

1. Respondents Arcade Enterprises, Inc., Ridgewood, Inc., Dennis M. Dougherty, Donald J. Dougherty and Robert S. Tansey have violated Section 12(b) of the Environmental Protection Act and Rule 951(a) of Chapter 3: Water Pollution.
2. Count II is dismissed.

3. Respondents shall cease and desist construction of additional sewers and operation of the existing sewers until such time as permits are issued by the Agency.
4. Respondents shall, by certified check or money order payable to the State of Illinois, pay a civil penalty of \$1000 which is to be sent to:

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

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 24<sup>th</sup> day of January, 1980 by a vote of 4-0.



Christan L. Moffett, Clerk  
Illinois Pollution Control Board