

ILLINOIS POLLUTION CONTROL BOARD
April 29, 1982

ILLINOIS ENVIRONMENTAL PROTECTION)
AGENCY,)
Complainant,)
v.) PCB 81-176
MARION E. CONLEY, d/b/a/ WILLOW WOOD)
MOBILE HOME PARK,)
Respondent.)

MS. CHRISTINE ZEMAN, ASSISTANT ATTORNEY GENERAL, APPEARED ON
BEHALF OF THE COMPLAINANT.
MR. MARION E. CONLEY APPEARED PRO SE.

OPINION AND ORDER OF THE BOARD (by J.D. Dumelle):

The Illinois Environmental Protection Agency (Agency) filed a complaint in this matter on November 5, 1981 alleging that for over six years Marion E. Conley has improperly operated his sewage treatment plant (STP) in violation of Rules 501(c), 601(a), 901 and 1201 of Chapter 3: Water Pollution, and Sections 12(a) and (f) of the Act. Hearing was held on February 26, 1982 at which only the parties appeared. The Agency filed an amended complaint and closing brief on March 12, 1982.

Conley owns and operates Willow Wood Mobile Home Park located in Caseyville, St. Clair County, and its associated STP. The STP consists of a comminuter, an extended aeration plant, a tertiary settling lagoon basin, a 1,000 gallon dosing tank, an intermittent sand filter and an effluent chlorination facility. The average design capacity is 140 population equivalents and discharge is to Harding Ditch upstream from the Mississippi River. The STP is operated under NPDES Permit No. IL0042218, effective May 26, 1976, and which expired on July 1, 1980.

On January 4, 1982 the Agency filed a request for admission of fact and genuineness of documents to which Conley never responded. Therefore, under Procedural Rule 314(c) each of the matters requested is deemed admitted. While Conley stated at hearing that "I don't say that because I didn't file a protest that I am guilty" of all that was alleged (R. 8-10), he also

failed to present any evidence at hearing contrary to the allegations. His testimony is relevant only in mitigation. Further, each of the admissions is supported by competent evidence in the record. The admissions and supporting evidence are summarized below (numbering is in accordance with the request for admission):

12. Intermittently from March 1976 through at least November, 1981, Conley allowed the polishing pond to contain grasses and be covered with duckweed (See also R. 30, 48, 94-95, 98-99, and Exs. 2, 19, 21 and 25).
13. During the same period the extended aeration plant, dosing tank, intermittent sand filters, and chlorinator were intermittently inoperable (See also R. 23-26, 35, 42, 47-50, 57, 59-61, 89-94 and Exs. 2, 18, 20 and 22-23).
18. Conley failed to sample and submit monthly discharge monitoring reports (DMR's) to the Agency as required in his permit for several months from May, 1976 to June, 1980 (See also R. 27 and 78-81).
19. As of November 5, 1981, Conley had failed to apply for reissuance of his NPDES permit which expired July 1, 1980 (See also R. 78).
24. From September 1, 1974 to at least November 5, 1981, Conley operated the STP without the supervision of a Class 4 or higher operator as required for that STP (See also R. 18, 27, 81-88, and 105).

Based upon these facts, the Board finds that from March, 1976 and continuing to the filing of the complaint, Conley intermittently failed to provide optimum operation and maintenance of the STP in violation of Rules 601(a) and 901 of Chapter 3 and Sections 12(a) and (f) of the Act.

The Board also finds that Conley failed to monitor, sample, record and report as required by his NPDES permit during the dates alleged in violation of Rules 501(c) and 901 of Chapter 3 and Sections 12(a) and (f) of the Act.

The Board further finds that from July 1, 1980 until the filing of the complaint Conley has allowed point discharges from the STP without a valid NPDES permit in violation of Rule 901 of Chapter 3 and Sections 12(a) and (f) of the Act.

Finally, the Board finds that from September 1, 1974 and continuing until the date of filing of this complaint, Conle

has caused or allowed the operation of his STP without the direct and active supervision of an operator certified as Class 4 or higher in violation of Rule 1201 of Chapter 3 and Section 12(a) of the Act.

All that remains, then, is to determine what penalty, if any, is appropriate in this case. There is no question that the location of the site is suitable and that the system does have social and economic value when properly operated. There is, however, some question as to the degree of injury and the technical and economic reasonableness of compliance.

Unfortunately, the evidence of environmental harm is rather sparse. To a large extent, that is as a result of Conley's failure to provide DMR's. The only effluent data presented shows a pH of 7.1, five-day biochemical oxygen demand of 1 mg/l, and suspended solids of 40 mg/l (Ex. 2K). Thus, only the suspended solids were in violation since the permitted level for them was 12 mg/l. There is also some testimony as to septic odors (See Ex. 2A) and that bypassing of the sand filter occurred (R. 35), but there is no evidence of degradation of Harding Ditch, nor even any testimony regarding any uses of that stream. However, given the operational shortcomings of the STP the Board has found, the Board can presume that some environmental harm occurred.

Further, those operational shortcomings could have been remedied in a technically practicable and economically reasonable manner. While Conley contended at hearing that "the money wasn't there in the first place" and that he had "the facts and figures to prove that it wasn't" (R. 128), he did not present those facts and figures. Further, on several occasions Conley agreed to make necessary repairs (See Exs. 2D and 12B). Given those agreements, it is somewhat inconsistent for him to contend that such repairs could not be made, especially when they consist of such actions as raking the sand filter and removing leaves and weeds.

The problem of duckweed covering the polishing pond serves as a good example of the crux of this case. Kenneth Hammer, an Agency Environmental Protection Specialist, testified that duckweed could be effectively removed from a polishing pond by skimming if it is done at the proper time of the year and through the use of readily available chemicals (R. 121-122). On the other hand Conley stated that "skimming...is an impossible job," but he may not have done it at a proper time. Further, he tried chemicals, but he apparently used the wrong ones since he thought the duckweed was algae (R. 109). He stated, "I do the best I can" (R. 120). However, he works other jobs six days a week, and on the seventh day "any spare time" is spent on the mobile home park and the STP (R. 120). Thus, STP maintenance suffers, especially since he is not a certified operator. He is now studying to take a certification test (R. 105-106), has applied for an NPDES permit

(R. 100-101 and 106-107), and has hired someone to routinely keep down the weeds (R. 109), but all these actions have been too long in coming. As the Agency points out in its closing brief, Mr. Conley "has repeatedly and consistently cut corners in the supervision and maintenance of his" STP. He apparently needs further incentive to comply with the State regulations. The Board will impose a penalty of \$1,000.

The Board notes that some of these violations have spanned seven years. While Conley is certainly at fault, the Agency must bear some responsibility for allowing the violations to continue for so long. The Agency should have realized several years earlier that Conley was not going to make good on his promises and would have better fulfilled its environmental protection role by filing this case much earlier. The Board further notes that on April 14, 1982 the Agency filed a motion to exclude certain facts allegedly included in Conley's "memorandum" of April 6, 1982. Given that no such memorandum was filed with the Board, that motion is moot.

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

ORDER

1. Marion E. Conley has violated Rules 501(c), 601(a), 901 and 1201 of Chapter 3: Water Pollution, and Sections 12(a) and (f) of the Act.
2. Within 45 days of the date of this Order Mr. Conley shall, by certified check or money order payable to the State of Illinois, pay a penalty in the amount of \$1,000 to be sent to:

Illinois Environmental Protection Agency
Fiscal Services Division
2200 Churchill Road
Springfield, Illinois 62706
3. Mr. Conley shall expeditiously pursue an NPDES permit for the STP and the attainment of proper certification for operation of the STP.
4. Within 45 days of the date of this Order Mr. Conley shall otherwise cease and desist from the violations found in this matter.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order were adopted on the 29th day of April, 1982 by a vote of 5-0.

Christan L. Moffett

Christan L. Moffett, Clerk
Illinois Pollution Control Board