

ILLINOIS POLLUTION CONTROL BOARD
December 17, 1987

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) PCB 84-119
)
POW WOW CLUB, INC.,)
)
Respondent.)

MATTHEW J. DUNN, ASSISTANT ATTORNEY GENERAL APPEARED ON BEHALF OF
COMPLAINANT;

MICHEAL HAVRILEKSO, ESQ. APPEARED ON BEHALF OF RESPONDENT.

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

This matter comes before the Board upon Complainant's August 3, 1984, Complaint, which alleges the following: Failure to employ at least one qualified and certified water supply operator in violation of 35 Ill. Adm. Code 603.103; operation of a public water supply system without chlorination in violation of 35 Ill. Adm. Code 604.401; failure to add required fluoride to a public water supply in violation of 35 Ill. Adm. Code 604.450; failure to submit monthly representative samples of finished water in violation of 35 Ill. Adm. Code 605.101; failure to submit representative yearly samples of raw and finished water for chemical analysis in violation of 35 Ill. Adm. Code 605.103; failure to monitor and analyze public water supply system for radiological concentrations in violation of 35 Ill. Adm. Code 605.106; failure to submit monthly reports and results of tests in violation of 35 Ill. Adm. Code 606.101, 606.102(B); and failure to repair a broken watermain for over one month thereby creating an extreme potential for contamination in violation of Ill.Rev.Stat. ch. 111-1/2, par. 1018.

Hearing was held on October 19, 1987; no members of the public attended. At hearing, the parties introduced an executed Stipulation and Proposal for Settlement ("Stipulation"). The Stipulation is attached and adequately addresses the relevant facts in this matter. Accordingly, this opinion will not contain the customary discussion of the issues. Respondent does not, per se, admit to violating the Environmental Protection Act ("Act") or the rules and regulations of this Board; however, the parties do stipulate to facts which constitute violations. Additionally, respondent agrees to pay a civil penalty in the amount of \$1,500 to aid in the enforcement of the Act.

Although the original complaint contains a long litany of alleged violations (which are repeated in the Stipulation), the settlement agreement explains that these have either already been corrected or will be corrected in the future via a new operating plan of compliance which includes the submission of required samples and analysis of water when necessary.

In evaluating this enforcement action and proposed settlement agreement, the Board has considered the facts and circumstances in light of the specific criteria of Ill.Rev.Stat. ch. 111-1/2, par. 1033(c) and finds the Stipulation and proposed settlement agreement acceptable pursuant to 35 Ill. Adm. Code 103.180. Accordingly, the Board orders Respondent to comply with the Order set forth below.

This Opinion and Order constitutes the Board's findings of facts and conclusion of law in this matter.

ORDER

It is the Order of the Illinois Pollution Control Board that:

1. Each of the nineteen (19) public water supply facilities at Tullocks Woods subdivision shall be individually responsible for ensuring their own compliance with all applicable statutes, rules and regulations of the State of Illinois;
2. Each of the nineteen (19) public water supply facilities at Tullocks Woods subdivision shall submit semi-monthly groundwater samples as required by 35 Ill. Adm Code 605.101 and will comply with the chemical analysis sampling requirements of 35 Ill. Adm. Code 605.103 and 605.106 when called upon by the Agency to do so;
3. The nineteen (19) public water supply facilities at Tullocks Woods shall submit monthly operating reports to the Agency as required by 35 Ill. Adm. Code 606.101 and shall also comply with the reporting requirements of Section 606.102(B);
4. The Board hereby accepts the Stipulation and Proposal for Settlement executed by the parties and filed with the Board on October 28, 1987. The terms and conditions of the Stipulation and Proposal for Settlement, which is attached hereto are incorporated into this Order, with the exception of those provisions related to the Public Water Supply Act and the Vesting Act, over which this Board has no jurisdiction.

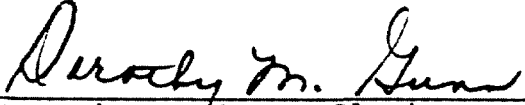
5. The Board makes the following findings of violations against respondent:
- a) Violation of Ill.Rev.Stat. ch. 111-1/2, par. 1018
 - b) Violation of Ill.Rev.Stat. ch. 111-1/2, par. 1019
 - c) Violation of 35 Ill. Adm. Code 603.103
 - d) Violation of 35 Ill. Adm. Code 604.401
 - e) Violation of 35 Ill. Adm. Code 604.405
 - f) Violation of 35 Ill. Adm. Code 605.101
 - g) Violation of 35 Ill. Adm. Code 605.103
 - h) Violation of 35 Ill. Adm. Code 605.106
 - i) Violation of 35 Ill. Adm. Code 606.101
 - j) Violation of 35 Ill. Adm. Code 606.102(B)
6. Respondent shall, by certified check or money order, payable to the State of Illinois and designated for deposit into the Environmental Protection Trust Fund, pay the sum of \$1,500 (one thousand five hundred dollars). The sum shall be paid as follows: \$500 on October 19, 1987; \$500 on November 30, 1987; and \$500 on December 30, 1987. Payment shall be mailed to:

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

IT IS SO ORDERED

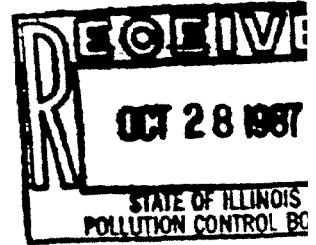
Board Member T. Meyer dissented.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 17th day of December, 1987, by a vote of 5-1.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board

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STATE OF ILLINOIS)
) SS
COUNTY OF WINNEBAGO)

BEFORE THE POLLUTION CONTROL BOARD OF
THE STATE OF ILLINOIS

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) PCB 84-119
)
POW WOW CLUB, INC., a not for)
profit Illinois corporation,)
)
Respondent.)

STIPULATION AND PROPOSAL FOR SETTLEMENT

Complainant, the Illinois Environmental Protection Agency, ("Agency or IEPA"), and the Respondent, Pow Wow Club, Inc., a not-for-profit Illinois corporation, ("Pow Wow"), hereby stipulate and agree to the following statement of facts and proposal for settlement. This stipulation and proposal for settlement is submitted pursuant to Section 103.180 of the Illinois Pollution Control Board Rules and Regulations, subtitle A: General Provisions, 35 Ill. Adm. Code 103.180. The parties agree that the following statement of facts and proposal for settlement is stipulated and agreed to for the purposes of settlement only and shall be null and void and of no effect in the event that the Board fails to accept each and every term and condition set forth.

The parties further agree that the interest of the public and the parties hereto will best be served by the resolution of this proceeding without further litigation under the terms and

Exhibit #1
9.87 SO

conditions provided herein, and they offer the stipulation and proposal for settlement in lieu of an evidentiary hearing.

I.

JURISDICTION

The Board has jurisdiction of the subject matter herein and of the parties consenting hereto pursuant to the Illinois Environmental Protection Act, Ill. Rev. Stat. (1985) ch. 111 1/2, pars. 1001 et seq.

II.

AUTHORIZATION

The undersigned representatives for each party certify that they are fully authorized by the party whom they represent to enter into the terms and conditions of this Stipulation and Proposal for Settlement and to legally bind them to it.

III.

STATEMENT OF FACTS

For the purposes of settlement only, the parties hereby stipulate and agree to the following:

1. Respondent, Pow Wow Club, Inc., is a not-for-profit Illinois corporation.

2. A July 18, 1974, order of the Board in Environmental Protection Agency v. Pow Wow Club, Inc., PCB 74-50, found Pow Wow

in violation of Sections 15, 18, and 19, of the Illinois Environmental Protection Act, Ill.Rev.Stat., ch. 111-1/2, par. 1015, 1018, and 1019 ("the Act"). In reaching that decision the Board specifically found that Pow Wow was operating a public water supply. The definition of a public water supply in effect at the time of the July 18, 1974, Board order, was a facility "where 10 or more separate lots or properties are being served" Ill.Rev.Stat., ch. 111-1/2, par. 1003(j). In finding that Pow Wow was operating a public water supply, the Board stated:

Whatever the intent of the original developer was, the fact is today there is a unified water supply system serving the subdivision. As Environmental Protection Agency Exhibit #9 points out, eight wells are now serving more than nine lots. There are gate valves located throughout the system to link the wells together. There is unified management and charges throughout the system. Therefore, it is the conclusion of the Board that the water supply system operated by Respondent is a public water supply.

3. A May 6, 1976, order of the Board in Pow Wow Club, Inc. v. Environmental Protection Agency, PCB 74-306, denied Pow Wow's requested variance. The Board's findings of fact and conclusions of law in that order explain Pow Wow's immediate attempts to comply with the Board's July 18, 1974, order.

4. Following the Board's denial of its variance request and in order to comply with the Board's July 18, 1974, order, Pow Wow modified its existing public water supply by:

- A. Installing four new groundwater wells.
- B. Separating the existing system into community systems with no more than 9 properties per

system.

- C. Deeding each system to the respective property owners who obtained their water from that system.
- D. Assigning one trustee per system who was responsible for the maintenance and operation of the system.

Pow Wow modified its public water supply so as to remove itself from the public water supply definition in Section 3 of the Act, Ill.Rev.Stat., ch. 111-1/2, par. 1003, (a facility serving 10 or more separate lots or properties) rather than comply with the various regulations applicable to public water supplies.

5. On January 1, 1982, a new definition of "public water supply" came into effect, redefining a public water supply to include water systems which "regularly serve at least 25 persons at least 60 days per year". P.A. 82-393, Sec. 1; Ill.Rev.Stat. (1985) ch. 111 1/2, par. 1003.28.

6. Beginning on January 1, 1978, Pow Wow Club charged a monthly fee of \$10.00 to each household in the Tollucks Woods subdivision for water and maintenance. This monthly fee was used for, among other things, the payment of electricity and maintenance bills for the operation of the drinking water wells. The Agency learned about Pow Wow's longstanding monthly billing practice in September, 1983. Through this billing practice Pow Wow operated and controlled all of the nineteen groundwater wells at the site.

7. Since at least January 1, 1982, all of the wells located at Tullocks Woods subdivision have been interconnected with the other drinking water wells. These interconnections safeguard against an interruption in drinking water supply in the instance where one well fails. Should one well fail, the homes connected to that well can receive their drinking water from another well through the interconnection. It is possible that water from any one well could be pumped to serve any of the homes in the subdivision. Since all wells at the site are interconnected, there is in fact only one water supply which serves Tullocks Woods subdivision. This one water supply serves more than 150 homes and more than 400 people in the subdivision.

8. Given Pow Wow's monthly billing practice and control of the maintenance and operation of all nineteen groundwater wells at Tullocks Woods and the interconnections which link all of the wells, there existed from January 1, 1982, until the date of the filing of the Complaint, one public water supply in Tullocks Woods, as that term is defined by Section 3.28 of the Act, Ill.Rev.Stat. (1985) ch. 111-1/2, par. 1003.28.

9. In August and September of 1983, a water main at the site broke and was allowed to remain unrepaired for over one month. The Agency learned of this broken water main on September 19, 1983.

10. Beginning on September 14, 1982, and continuing each day of operation up to the date of filing of the complaint, Respondent, Pow Wow Club, Inc., has operated a public water supply system without having in Respondent's employ at least one natural person certified as competent as a Class D, Class C, Class B, or Class A Water Supply Operator in violation of Section 1 of the Public Water Supply Act, ("PWS Act"), Ill.Rev.Stat., ch. 111-1/2, par. 501, Section 603.103 of the PWS Regulations, 35 Ill. Adm. Code 603.103, and therefore Section 18 of the Act, Ill.Rev.Stat., ch. 111-1/2, par. 1018. At no time during the period in question had the IEPA exempted Pow Wow from the requirements of 603.103 of 35 Ill. Adm. Code.

11. Beginning on September 14, 1982, and continuing each day of operation up to the date of filing the complaint, Respondent has operated its public water supply system without chlorinating the water before it entered the distribution system in violation of Section 604.401 of the PWS Regulations, 35 Ill. Adm. Code 604.401, and therefore Section 18 of the Act, Ill.Rev.Stat., ch. 111-1/2, par. 1018. At no time during the period in question had the IEPA exempted Pow Wow from the requirements of 604.401 of 35 Ill. Adm. Code.

12. Beginning on January 1, 1982, and continuing each day of operation up to the date of filing of the complaint, Respondent has failed to maintain a fluoride content of not less than 0.9 mg/L nor more than 1.2 mg/L in the public water supply at Tullocks Woods in violation of Section 7(a) of the "Vesting Act", Ill.Rev.Stat., ch. 111-1/2, par. 121(g)(1), Section 604.405 of

the PWS Regulations, 35 Ill. Adm. Code 604.405, and therefore of Section 18 of the Act, Ill.Rev.Stat., ch. 111-1/2, par. 1018.

13. On September 19, 1983, an inspection of the Respondent's water supply system revealed the presence of a broken water main, which had continued unrepaired for over a month, creating an extreme potential for contamination within the water system. By causing or allowing the operation of the public water supply system with a broken water main, respondent violated Section 18 of the Act, Ill.Rev.Stat., ch. 111-1/2, par. 1018.

14. Beginning on September 14, 1982, and continuing each day of operation up to the date of filing of the complaint, Respondent has failed to submit representative samples of the finished water from the distribution system to a certified laboratory for bacteriological analysis every month in violation of Section 605.101 of the PWS Regulations, 35 Ill. Adm. Code 605.101, and therefore Sections 18 and 19 of the Act, Ill.Rev.Stat., ch. 111-1/2, pars. 1018, 1019.

15. Beginning on September 14, 1982, and continuing each day of operation up to the date of filing of the complaint, Respondent has failed to submit a representative sample of the finished water to the Agency's laboratory for chemical analysis in violation of Section 605.103 of PWS Regulations, 35 Ill. Adm. Code 605.103, and therefore Sections 18 and 19 of the Act, Ill.Rev.Stat., ch. 111-1/2, pars. 1018, 1019.

16. Beginning on November 3, 1982, and continuing each day of operation up to the date of filing of the complaint, Respondent has failed to monitor and analyze the public water supply system for the set radiological standards in violation of Section 605.106 of the PWS Regulations, 35 Ill. Adm. Code 605.106 and therefore Sections 18 and 19 of the Act, Ill.Rev.Stat., ch. 111-1/2, pars. 1018, 1019.

17. Beginning on September 14, 1982, and continuing each day of operation up to the date of filing of the complaint, Respondent has failed to submit monthly reports to the Agency and has failed to report violations of requirements set forth in the PWS Regulations therefore violating Sections 606.101 and 606.102(b) of the PWS Regulations, 35 Ill. Adm. Code 606.101 and 606.102(b) and Sections 18 and 19 of the Act, Ill.Rev.Stat., ch. 111-1/2, pars. 1018, 1019.

18. On October 24, 1983, Ira M. Markwood, manager of the division of Public Water Supplies of the Agency, sent an enforcement notice letter to Mr. John Ditsch, then president of Pow Wow Club. The enforcement notice letter offered a meeting between the Agency and Pow Wow as required by Section 31(d) of the Act. The enforcement notice letter encompassed all of the violations of the Act and regulations expressed above.

19. Pow Wow never replied to the Agency's October 24, 1983 Enforcement Notice Letter.

20. On August 3, 1984, the Agency filed a complaint against Pow Wow with the Board in PCB 84-119, in which the Agency alleged

that through the operation of the public water supply in Tullocks Woods subdivision, Pow Wow violated Sections 18 and 19 of the Illinois Environmental Protection Act, Ill.Rev.Stat., ch. 111-1/2 par. 1018 and 1019; Section 501 of the Public Water Supply Act, ch. 111-1/2, par. 501; Section 7(a) of the "Vesting Act", Ill.Rev.Stat., ch. 111-1/2, par. 121(g)(1); and Sections 603.103, 604.401, 604.405, 605.101, 605.103, 605.106, 606.101 and 606.102(b) of the Rules and Regulations of the State of Illinois, 35 Ill. Adm. Code.

IV.

SECTION 33(c) CRITERIA

Section 33(c) of the Illinois Environmental Protection Act provides:

In making its orders and determinations, the Board shall take into consideration all the facts and circumstances bearing upon the reasonableness of the emissions, discharges, or deposits involved including, but not limited to:

1. the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;
2. the social and economic value of the pollution source;
3. the suitability or unsuitability of the pollution source to the area in which it is located, including the question of priority of location in the area involved; and
4. the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source.

Ill.Rev.Stat. (1985) ch. 111 1/2, par. 1033(c).

In response to each of these factors the parties state as follows:

A. Pow Wow's actions as described herein unnecessarily subjected the residents of Tullock's Woods to the threat of an unsafe water supply.

B. Pow Wow's public water supply at Tullocks Woods was of considerable social and economic benefit to the residents thereof.

C. Pow Wow's public water supply was suitable to the Tullocks Woods subdivision of Rockford, Illinois.

D. It was technically practicable and economically reasonable for Pow Wow to comply with the various sections of the acts and regulations which it violated.

V.

PROPOSED TERMS OF SETTLEMENT

The parties having agreed that it is in the best interest of the public and the parties hereto to resolve this proceeding without further litigation, have developed the following compliance program to bring Respondent's Public Water Supply into compliance with the requirements of the Illinois Environmental Protection Act, the Public Water Supply Act, the Vesting Act and the Public Water Supply Regulations of 35 Ill. Adm. Code. The Respondent, as part of this compliance program, has agreed to

operate the 19 groundwater wells in the Tullocks Woods subdivision as 19 separate public water supplies, as that term is defined under Section 3.28 of the Act, Ill.Rev.Stat. (1985) ch. 111-1/2, par. 1003.28. This alternative for site compliance was chosen so as to safeguard the health of the residents of Tullocks Woods. As outlined below, the 19 public water supplies located in Tullocks Woods subdivision will now begin a water quality sampling program.

A. During December, 1985, the well captains for each of the nineteen groundwater wells at Tullocks Woods subdivision submitted notification of ownership or responsible personnel forms to the Agency. These notifications established nineteen separate public water supplies at Tullocks Woods. Each of these public water supplies are individually responsible for ensuring their own compliance with all applicable statutes, rules and regulations of the State of Illinois, notwithstanding any joint maintenance agreements.

B. During December, 1985, the well captains of the nineteen groundwater wells submitted exemption application forms, requesting exemption from the requirements that each public water supply comply with the chlorination requirements of Section 604.401 of 35 Ill. Adm. Code, and the certified operator requirements of Section 603.103 of 35 Ill. Adm. Code. The Agency granted both of these exemption requests during January, 1986.

C. During December, 1985, the well captains of the nineteen groundwater wells submitted forms titled, "Registration of person

in responsible charge for water supplies which have received exemption status from the requirement for a certified operator", in order to comply with Section 603.104 of 35 Ill. Adm. Code.

D. Beginning in February, 1986, and continuing henceforth, the nineteen public water supplies at Tullocks Woods will submit to the Agency the semi-monthly groundwater well samples as required by Section 605.101 of 35 Ill. Adm. Code (bacteriological sampling).

E. The nineteen public water supplies at Tullocks Woods will comply with the Chemical Analysis sampling requirements of Section 605.103 of 35 Ill. Adm. Code and the Radiological Analysis Sampling requirements of Section 605.106 of 35 Ill. Adm. Code, when called upon by the Agency to do so.

F. Beginning in December, 1985, all gate valves which interconnect the groundwater wells at Tullocks Woods were permanently closed, thereby limiting each groundwater well to servicing only 9 separate lots or properties. Thus none of the wells meet the definition of "public water supply" found in Section 1 of the Vesting Act, Ill.Rev.Stat., ch. 111-1/2, par. 121(a), which provides in part:

"Public water supply" means all mains, pipes, and structures through which water is obtained and distributed to the public . . . where 10 or more separate lots or properties are being served or intended to be served

Since none of the wells at Tullocks Woods are public water supplies under the Vesting Act, none of the wells must comply

with the fluoridation requirement of Section 7(a) of the Vesting Act, Ill.Rev.Stat., ch. 111-1/2, par. 121(g)(1), or Section 604.405 of 35 Ill. Adm. Code.

G. Beginning in February, 1986, and continuing henceforth the nineteen public water supplies at Tullocks Woods will submit a monthly operating report to the Agency as required by Section 606.101 of 35 Ill. Adm. Code. The nineteen public water supplies at Tullocks Woods further agree to comply with the reporting requirements of Section 606.102(b) of 35 Ill. Adm. Code.

H. In consideration of the above listed actions taken by Respondent, Pow Wow, to obtain compliance with the Illinois Environmental Protection Act, the Public Water Supply Act, and the Vesting Act, as well as Pow Wow's agreement to pay \$1,500.00 to the Illinois Environmental Protection Fund at the intervals herein specified, Complainant, Illinois Environmental Protection Agency, releases, waives and discharges Pow Wow from any and all liability or penalties under the above specified acts, for any conduct that was the subject matter of the Complaint.

VI.

PENALTY

The parties agree that in consideration of Pow Wow's conduct, the foregoing compliance program, and the cost to Pow Wow of coming into compliance with the public water supply regulations of 35 Ill. Adm. Code, a Civil penalty of \$1,500.00 is reasonable and would serve as an appropriate aid in enforcement of

the Act. The penalty shall be paid to the Environmental Protection Trust Fund of Illinois in accordance with the following schedule:

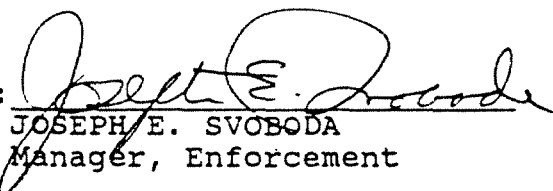
- \$500.00 on October 19, 1987;
- \$500.00 on or before November 30, 1987; and
- \$500.00 on or before December 30, 1987.

Payment shall be made by certified check or money order and shall be sent by first class mail to:

Illinois Environmental Protection Agency
Fiscal Services Division
2200 Churchill Road
P. O. Box 19276
Springfield, IL 61794-9276

WHEREFORE, Complainant and Respondent jointly pray that the Board adopt and accept the foregoing stipulation and settlement as written.

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

BY: 
JOSEPH E. SVOBODA
Manager, Enforcement

DATE: October 2, 1987

POW WOW CLUB, INC.

BY: _____
AL LABUNSKI
President

DATE: _____

BY: _____
MICHAEL HAVRILESKO
attorney for Pow Wow Club, Inc.

DATE: _____

the Act. The penalty shall be paid to the Environmental Protection Trust Fund of Illinois in accordance with the following schedule:

\$500.00 on October 19, 1987;

\$500.00 on or before November 30, 1987; and

\$500.00 on or before December 30, 1987.

Payment shall be made by certified check or money order and shall be sent by first class mail to:

Illinois Environmental Protection Agency
Fiscal Services Division
2200 Churchill Road
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ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

BY: _____
JOSEPH E. SVOBODA
Manager, Enforcement

DATE: _____

POW WOW CLUB, INC.

BY: Al Labunski
AL LABUNSKI
President

DATE: Oct. 13, 1987

BY: Michael Havrilesko
MICHAEL HAVRILESKO
attorney for Pow Wow Club, Inc.

DATE: 10-15-87

ATTORNEY GENERAL NEIL F. HARTIGAN

BY: Joseph Claps by djp
JOSEPH CLAPS, Chief
Environmental Control Division
Assistant Attorney General

DATE: 10/16/87

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