

ILLINOIS POLLUTION CONTROL BOARD
August 22, 1984

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) PCB 84-52
)
CITY OF HERRIN, a)
municipal corporation,)
)
Respondent.)

MR. JAMES L. MORGAN, ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF THE COMPLAINANT.

MR. PAUL S. MURPHY, CITY ATTORNEY, APPEARED ON BEHALF OF THE RESPONDENT.

OPINION AND ORDER OF THE BOARD (by W. J. Nega):

This matter comes before the Board on the April 26, 1984 Complaint brought by the Illinois Environmental Protection Agency (Agency) which alleged that the City of Herrin caused or allowed the construction of part or all of its proposed sewer extension without the requisite construction permit from the Agency in violation of 35 Ill. Adm. Code 309.202 and Section 12(c) of the Illinois Environmental Protection Act (Act).

A hearing was held on July 30, 1984. The parties filed a Stipulation and Proposal for Settlement on August 1, 1984.

The City of Herrin, which has a population of about 10,000 people, owns and operates a wastewater treatment plant (WWTP) and associated sanitary sewer system in Williamson County, Illinois which provides service to a majority of the local residents. The Respondent's facility, which first became operational in 1950, currently requires labor-intensive operations and maintenance because it is an older WWTP. This WWTP presently includes two primary clarifiers, an aerated grit chamber, two final clarifiers, a four-arm trickling filter, effluent chlorination, anaerobic sludge digestion, and sludge drying beds. Renovation and expansion of the Respondent's wastewater treatment facilities has been an on-going process which has encountered many delays and difficulties during recent years due to the unavailability of grant funding, changes in consulting engineers, and various other problems.

The Respondent discharges effluent from a point source (i.e., Outfall 001) at its WWTP to an unnamed tributary of the Big Muddy River, a navigable Illinois water, pursuant to NPDES Permit No. IL0029165. On August 29, 1980, the Agency placed the City of Herrin's WWTP on restricted status due to continuing excursions from the applicable NPDES Permit limitations. This restricted status on the City of Herrin's wastewater treatment facilities has remained in effect since its imposition on August 29, 1980. (Stip. 2).

The City of Herrin's operation of its wastewater treatment facility was previously the subject of an enforcement action before the Board in PCB 79-239. (See: Illinois Environmental Protection Agency v. City of Herrin, PCB 79-239, 44 PCB 217, December 17, 1981). In the aforementioned enforcement case, the Respondent was ordered to cease and desist from further violations, to pay a stipulated penalty of \$1,200, and to follow a specified compliance plan to upgrade its WWTP. The Agency has indicated that the Respondent's compliance with this December 17, 1981 Board Order "had proceeded satisfactorily". (Stip. 3).

The Petitioner has also previously been granted two variances by the Board. On April 21, 1983, the Board granted the City of Herrin a variance in PCB 82-148 from 35 Ill. Adm. Code 309.241 to allow the Agency to issue construction and operating permits to authorize the connection of nineteen homes to the Petitioner's sewer system and wastewater treatment plant. On page three of the Board's April 21, 1983 Opinion in City of Herrin v. Illinois Environmental Protection Agency, PCB 82-148, 52 PCB 71, the Board stated:

"Although the Board is concerned that Herrin has installed a sewer extension and connections to five of the homes prior to this request for variance and in violation of the permit requirement, the Board also recognizes the potential health hazards due to malfunctioning or antiquated systems. According to Herrin, replacement of the private systems could cost each resident \$3,850.00. The Board finds this to be an unreasonable hardship which warrants variance relief."

Similarly, on November 7, 1983, the City of Herrin filed a petition for variance in PCB 83-161 seeking relief from 35 Ill. Adm. Code 309.241 to request authorization to construct and operate a sewer extension to serve twenty-seven residential homes in the Duncan First Home Addition to replace existing, malfunctioning private septic systems in order to avoid a public health threat. Of the twenty-seven homes involved, twenty-one residences would have to be connected via the new sewer extension to the City of Herrin's wastewater treatment plant which is under restricted

status. On page three of its Recommendation, the Agency has noted that:

"On November 16, 1983 an Agency field inspector conducted an inspection of the site of the proposed sewer extension. During his inspection he observed that construction of the proposed sewer extension in PCB 83-161 was currently underway and had been underway for some time prior to his inspection. This work in progress encompassed approximately two blocks of the proposed construction but no homes had been connected to the line. This construction was halted by the City several days after the November 16th inspection." (Rec. 3; Comp. 2).

On May 18, 1984, the Board granted the City of Herrin a variance in PCB 83-161 from 35 Ill. Adm. Code 309.241 for the purpose of constructing and operating a sewer extension to service twenty-one residences in the Duncan First Home Addition in the City of Herrin. As an additional restriction upon the Petitioner's activities, the Board Order in PCB 83-161 mandated that "prior to permitting any actual tap-ons the City of Herrin shall adopt a city ordinance which requires that flow restricters in faucet-heads and toilet dams be installed in residences as a prerequisite to new sewer tap-on permits being issued by the City." (See: City of Herrin v. Illinois Environmental Protection Agency, PCB 83-161, May 18, 1984).

The Complaint in the present enforcement action in PCB 84-52 states that the City of Herrin's variance petition requesting authorization for the construction of the proposed sewer extension serving the homes in the Duncan First Home Addition had not been approved by November 16, 1983 (i.e., the date of the Agency's inspection wherein the inspector found construction already in progress) nor had it been approved by April 26, 1984 (i.e., the filing date of the Complaint in PCB 84-52). (See: Paragraph 10 on page 3 of the Complaint in PCB 84-52).

On page four of the Stipulation and Proposal for Settlement in the present case (PCB 84-52), the Agency has stated that "the variance petition by the City for the sewer extension involved in this enforcement action had not been disposed as of the date of submission of this Stipulation and Proposal for Settlement. The Agency has filed a Recommendation approving issuance of the variance."* (Stip. 4).

* The earliest signature date on page five of the Stipulation is May 22, 1984 and the Agency was apparently unaware of the Board's May 18, 1984 action in PCB 83-161.

The proposed settlement agreement provides that the City of Herrin admits the violations as charged in the Complaint in that it did begin construction of the sewer extension for the Duncan First Home Addition without first receiving a variance authorizing that construction in violation of 35 Ill. Adm. Code 309.202 and Section 12(c) of the Act. The Respondent agrees to: (1) cease and desist from further violations with respect to sewer extensions; (2) recommence construction of this sewer extension only after receiving a variance from the Board authorizing such construction, and (3) pay a stipulated penalty of \$500.00. (Stip. 4-5).

In evaluating this enforcement action and proposed settlement agreement, the Board has taken into consideration all the facts and circumstances in light of the specific criteria delineated in Section 33(c) of the Act and finds the settlement agreement acceptable under 35 Ill. Adm. Code 103.180.

Accordingly, the Board finds that the Respondent, the City of Herrin, has violated 35 Ill. Adm. Code 309.202 and Section 12(c) of the Illinois Environmental Protection Act. The City of Herrin will be ordered to cease and desist from further violations and to pay the stipulated penalty of \$500.00.

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

ORDER

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

1. The Respondent, the City of Herrin, has violated 35 Ill. Adm. Code 309.202 and Section 12(c) of the Illinois Environmental Protection Act.
2. The Respondent shall cease and desist from further violations.
3. Within 45 days of the date of this Order, the Respondent shall, by certified check or money order payable to the State of Illinois, pay the stipulated penalty of \$500.00 which is to be sent to:

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

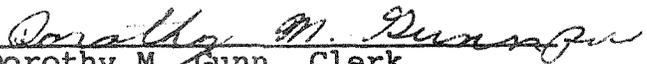
4. The Respondent shall comply with all the terms and conditions of the Stipulation and Proposal for

Settlement filed on August 1, 1984, which is incorporated by reference as if fully set forth herein.

IT IS SO ORDERED.

J. Theodore 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 22nd day of August, 1984 by a vote of 5-1.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board