ILLINOIS POLLUTION CONTROL BOARD
December 5, 1985

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,	)	
Complainant,	)	PCB 84-85
v.	)	
VILLAGE OF ORANGEVILLE,	)	
Respondent.	)	

WILLIAM E. BLAKNEY and MATTHEW J. DUNN, ASSISTANT ATTORNEYS GENERAL, APPEARED ON BEHALF OF COMPLAINANT.

THE HON. MILTON J. BOSTIAN, VILLAGE PRESIDENT, APPEARED ON BEHALF OF RESPONDENT.

OPINION AND ORDER OF THE BOARD (by J. Theodore Meyer):

This matter comes before the Board upon a complaint filed on June 29, 1984 by the Illinois Environmental Protection Agency (Agency) against the Village of Orangeville. The complaint contains nine counts alleging violations of sections 12(a), 12(b) and 12(f) of the Environmental Protection Act ("Act") concerning water pollution and sections 15 and 18 concerning public drinking water supplies. The applicable Board regulations also alleged to have been violated are as follows: 35 Ill. Adm. Code 304.120(a) (total suspended solids and five-day biochemical oxygen demand) ("TSS" and "BOD"); 304.106 (effluent turbidity); 302.403 (downstream turbidity); 309.102 (monitoring and reporting requirements); 309.202(a) and 309.203 (permitting requirements for treatment works); 602.101(a) and 602.102 (permitting requirements for public water supplies). Parallel violations of the Village's NPDES permit are alleged.

The Village of Orangeville is located in Stephenson County, Illinois. Its populace consists of approximately 600 persons. The Village owns and operates the wastewater treatment facility and public water supply which are the subject of this enforcement action. The Board will treat the allegations concerning these facilities separately.

The Wastewater Treatment Facility

Orangeville's wastewater treatment facility consists of, inter alia, a single contact stabilization plant with liquid sludge storage tanks. It has a design average flow of 0.06 million gallons per day ("MGD") and a design maximum flow of 0.15 MGD. Discharge from the facility flows into Richland Creek, a

tributary of the Pecatonica River. The facility operates under NPDES permit No. IL0024805 effective as of September 2, 1983 and expiring on August 1, 1988. This permit imposes limits of 30 mg/l BOD and 30 mg/l TSS on a monthly average. The operation of the plant results in the formation of sewage sludge, which is disposed of by landspreading on agricultural lands.

The Agency has lodged a seven count complaint concerning this facility. The first count charges that the Village caused or allowed the discharge of effluent which had BOD and TSS concentrations in excess of five times the numerical standard as measured by a grab sample. These violations allegedly occurred on or before February 7, 1983 up to and including the date of the filing of the complaint. Effluent containing two times the applicable numerical standard for TSS as measured by a daily composite sample is also alleged to have been discharged since on or before October 12, 1983. Such discharges are alleged to be in violation of 35 Ill. Adm. Code 304.120(a) and Section 12(a) of the Act.

At hearing, complainant introduced waste treatment works effluent sampling forms which demonstrated that on February 7, 1983; March 14, 1983; July 27, 1983; October 12, 1983 and November 21, 1983 the plant was operating in violation of the Board rules and the Act as alleged. (Comp. Group Ex. 2.). In response, the Village submitted seventeen sampling forms beginning with January, 1984 and ending with July 1985 to show that the plant has achieved satisfactory test results. However, these forms do little to refute the allegations. First of all, seven of the thirty-four tests submitted by the Village do indicate violations. These violations are not negligible: BOD ranged from 42 to 218 mg/l and TSS ranged from 49 to 290 mg/l. Moreover, seven unsatisfactory tests out of thirty-four indicates that the plant was operating out of compliance approximately 20 percent of the time. Secondly, even if the plant were operating satisfactorily during 1985, this does not serve to demonstrate that the plant was in compliance on the dates alleged in 1983 and 1984. To the contrary, the forms submitted by the Village substantiated additional violations on January 27, 1984 and February 3, 1984. While the Village's submittal does indicate compliance through March, April, May and finally June of 1984 when the complaint was filed, the Board cannot agree that the violations are intermittent in nature. The Village contends that the violations are isolated incidents brought about by rainy days and Mondays, which are heavy wash days. The Village argues that it is absurd to expect perfect performance. However, the Board finds, as already noted, that the excursions are significant in both the number of occurrences and their degree. It is incumbent upon Orangeville to take steps to cure these operational problems. If rainfall events were to excuse non-compliance, violations would be so common as to make the environmental goals contained in the Act unattainable.

The Village also argues that Richland Creek is in effect a secondary contact water and thus, the violating discharges are not capable of polluting its already degraded water quality. This argument is based on the Village's assertion that the creek is contaminated with insecticides, farm chemicals and bovine fecal matter. (R. at 135-36). The Village argues that since no one swims in or drinks the water, its discharges have no harmful effect. The Board points out that all waters of the State must meet the general use standards unless otherwise specifically provided. 35 Ill. Adm. Code 303.201. Section 303.441, which classifies certain waters as "secondary contact waters", does not include Richland Creek. It is not within the Village's discretion or expertise to unilaterally determine the use classifications for the waters of this State. Accordingly, the general use standards apply. In summary, the Board finds that Orangeville has violated Section 12(a) of the Act and 35 Ill. Adm. Code 304.120(a).

Counts II and III are related to Count I. Count II charges the Village with discharging effluent containing obvious unnatural color and/or sludge solids in violation of 35 Ill. Adm. Code 304.106 and Section 12(a). Count III alleges that the Village's discharges resulted in the presence of sludge deposits, unnatural color and/or turbidity in Richland Creek downstream of the Village's outfall in violation of 35 Ill. Adm. Code 302.403 and Section 12(a) of the Act. The Board notes that Section 302.403 applies to secondary contact waters and thus its citation appears to be an error on the Agency's part. The analgous general use water quality standard is Section 302.203. Evidence introduced by the Agency establishes that on February 7, 1983; March 14, 1983; October 12, 1983 and January 9, 1984 the Agency inspector observed high turbidity and solids in the effluent. Similarly, sludge banks, plumes of solids and plumes of turbidity were observed downstream of the effluent on these occasions, while conditions upstream were stated to be clear. (Comp. Group Ex. 1). Special analyses conducted in the stream on March 14, 1983 and July 27, 1983 validate these field observations. Specifically, on March 14 upstream BOD/TSS was 1.5/9 while downstream was 40/66. On July 27 upstream samples were 2/90; downstream samples were 31/130. (Comp. Group Ex. 3). The Village responds that these charges are exaggerated; that there is no turbidity or solids downstream or in its effluent but does not explain the Agency observations and tests. Although no dates were testified to, even the Village's witness testified that while normally the effluent was clear, after rainstorms it appeared cloudy. (R. at 95). Thus, the Board finds the Village to have violated Section 12(a) and 35 Ill. Adm. Code 304.106. The Board declines to find the Village in violation of Section 302.403 as it is inapplicable to Richland Creek.

Count IV concerns the Village's failure to monitor and report the concentration of TSS and Count V similarly concerns the Village's failure to monitor and report the concentration of fecal coliform in its effluent both in violation of its NPDES

permit, 35 Ill. Adm. Code 309.102 and Section 12(f) of the Act. Count VI alleges that the Village also violated its permit, Section 12(f) and 35 Ill. Adm. Code 309.102 by failing to provide and utilize equipment to test for TSS. Section 12(f) and 35 Ill. Adm. Code 309.102 provide that it is unlawful to discharge contaminants into the waters of the State in violation of any term or condition imposed by a NPDES permit. At hearing it was established that Orangeville has never filed the required monthly reports on TSS and fecal coliform (R. at 45-46). As to TSS monitoring, the Village maintains that it does not have the equipment or personnel to do such monitoring and that there is no known evidence that it is necessary or that any damage has been done. However, the plant operator does perform tests for pH and BOD (R. at 106). No explanation is given for the failure to perform testing for suspended solids. The operator also testified that in the past the tests have been performed for the Village by an outside laboratory. The Board echoes the Agency's argument that monitoring and reporting form an integral part of the NPDES permit system which is the basis for the state and national effort to control water pollution. If all permittees were allowed to disregard these requirements, the NPDES program would be of little use in this effort. As to monitoring fecal coliform, Orangeville appears to misunderstand the requirements. The Village objects to monitoring because it contends that Richland Creek contains a coliform count of one to two million after a rain. However, the monitoring requirement applies to the effluent not the creek itself. The Village asserts that chlorination is unnecessary in Richland Creek because it is a secondary contact water and thus, monitoring for fecal choliform is simply a waste. The Board reiterates that Richland Creek is not, in fact, a secondary contact water and that monitoring and reporting are an integral part of the NPDES program. Permit conditions which the Village finds objectionable should be challenged in the context of a permit appeal. Such conditions cannot be unilaterally disregarded after the time for such an appeal has run. Thus, the Board finds the Village to be in violation of an NPDES permit condition, 35 Ill. Adm. Code 309.102 and Section 12(f) of the Act.

Lastly, Count VII pertains to the Respondent's disposal of sewage sludge generated by its wastewater facility. The Village allegedly spread the sludge on agricultural lands without obtaining an Agency Construction and Operating permit in violation of 35 Ill. Adm. Code 309.202(a), 309.203 and Section 12(b) of the Act. The Agency, at hearing, demonstrated that the necessary permit has never been issued and the sludge hauler admitted he had no such permit (R. at 48, 96). The Village stated that it objected to the requirements for securing a permit, specifically submitting a surveyor map of the spreading location and a copy of the contract with the individual owning the land. Thus, it is not disputed that Orangeville simply determined to ignore the regulatory requirements and the Board finds them in violation thereof. Although Orangeville submitted a permit issued to the sludge hauler by the county health

department, this in no way fulfills the Village's obligations under the Environmental Protection Act. (R. at 91, Resp. Ex.1). The Board points out that the state permitting requirement helps to insure that among other things, groundwater supplies in the area will be adequately protected.

Public Drinking Water Supply

The Agency also alleges violations concerning the Village's public water supply. Orangeville's public water supply consists of, inter alia, two wells, a pump house, fluoridation equipment, a 47,000 gallon elevated storage tank, and water mains. The system serves approximately 600 persons.

Count VIII of the Agency's complaint pertains to the construction and operation of a water main extension by the Village without first obtaining an Agency Construction and Operating Permit in violation of 35 Ill. Adm. Code 602.101(a), 35 Ill. Adm. Code 602.102 and Section 15 of the Act. The Village contends that Section 15 does not require a permit for the extension because it did not affect "sanitary quality, mineral quality, or adequacy of the public water supply." Id. The Village, however, misperceives this provision's qualifying language. Under Section 15, permits are required for "any" construction and plans and specifications must show all construction which "may" affect quality and adequacy of the supply. Construction of a new water main clearly may affect quality and adequacy and is not excluded under 35 Ill. Adm. Code 602.101 as the Village claims. This section merely excludes "routine maintenance, service pipe connections, hydrants and valves, or replacement of equipment [with its equivalents]." Id. The Village freely admits that it ignored the permit requirement "because it didn't make any sense." (R. at 171). The Board disagrees with this characterization of the permitting requirement. The permitting process insures that the integrity of the public water system is maintained. The Illinois legislature has determined that "state supervision of public water supplies is necessary in order to protect the public from disease and to assure an adequate supply of pure water for all beneficial uses." Section 14 of the Act. The Board finds Orangeville in violation of those provisions alleged in Count VIII.

Count IX alleges violations of Section 18 of the Act which requires:

> Owners and official custodians of public water supplies shall direct and maintain the continuous operation and maintenance of water-supply facilities so that water shall be assuredly safe in quality, clean, adequate in quantity, and of satisfactory mineral character for ordinary domestic consumption.

The Agency alleges that since June 15, 1983 the Village violated this provision by a) failing to repair and maintain the primary well pump line to prevent chattering; b) failing to provide a backup system for activating the second well pump should the primary pump fail; c) failing to provide an alarm system to alert responsible officials in the event of system failure; d) failing to routinely exercise water valves; e) failing to provide a secure lock on the elevated tank hatchway, to prevent possible sabotage and contamination of the system; and f) failure to provide a master water meter to determine the amount of water used.

As to the chattering pump, the Village attempted to introduce a letter from the Lyons Well Drilling Company to demonstrate that the chattering was not occurring in the primary pump but rather in a little used emergency gear drive (Resp. Ex. 4). The Agency objected to introduction of the letter on hearsay grounds but the hearing officer allowed the Village to make an offer of proof as to its contents. The Board accepts the offer of proof and allows the evidence under 35 Ill. Adm. Code 103.204. Because the evidence concerning the first allegation is contradictory, the Board declines to find that the Village violated Section 18 by failing to repair the chattering pump.

The Village also contends that they have installed a back-up pump and an alarm system and that the water valves are in fact routinely exercised. The low-water pressure alarm and back-up pump are vital to insure both the integrity and adequacy of the water supply. Lack of these necessities lead to an overflow incident of fluoride into Orangeville's water system on June 14, 1983. (R. at 81, Comp. Ex. 7). As to these alleged deficiencies, the Mayor stated on the record that they have all been corrected. In fact, the Agency stated their belief at hearing that a low pressure alarm system has been installed. (R. at 85). Since the only evidence before the Board is conflicting sworn testimony, the Board will find for the Village as to these three allegations.

The Village does not deny that it has failed to install a lock on the water tower but contends that the lock is unnecessary because they "do not have any degenerates around town." (R. at 190). However, the Village does admit that periodically youngsters gain access to the water tower for purposes of spraying graffitti on it. A padlock is a sensible precaution to guard the integrity of the water supply against such pranksters, whether well-meaning or not.

Turning to the last allegation, the Village also admits that it has not installed a master water meter. The Village contends that to install such a meter would raise rates and has no relation to the safety or purity of the water. The Village prefers to calculate water consumption by recording the amount of time its pumps operate. The Board suggests that the purchase cost of a water meter is insignificant compared to the cost of

the water that can be saved on leaks detected by use of the meter. The Village admitted that in the past it knew certain valves were leaking but could not determine how much (R. at 193). The use of a master water meter is a valuable tool in ascertaining such leaks to the ultimate benefit of the water customers. Early leak detection can save money and helps to assure an adequate supply as required under Section 18. Thus, the Board finds that the Village has violated Section 18 of the Act by failing to provide a padlock and master water meter for the public water supply.

Findings and penalty

After evaluating the factors listed in Section 33(c) of the Act, the Board finds that the Village's violations have an adverse impact on the general welfare and health of the people of the State of Illinois by contributing contaminants to Richland Creek and endangering the adequacy and quality of the public drinking water supply. The Board further finds that the Village's facilities are socially and economically valuable and suitably located. The Board also finds that it is technically feasible and economically reasonable for the Village to eliminate these violations. Indeed, some of the measures to be taken, especially concerning the public water supply, require only minimal time and virtually no expense.

As to the appropriate penalty, the Board notes that many violations were alleged and proven by the Agency. The Board must concur with the Agency's statement that although some of the violations may not appear to be of the most serious type, each has the potential to create serious harm. Taken together, the failure to correct these violations demonstrates a cavalier attitude on the Village's part concerning this state's environmental laws. Were each political subdivision in this state to determine unilaterally which environmental laws it will adhere to and which it will reject, the state's environmental program would be in a state of hopeless disarray. The Village freely admits that it simply has disregarded requirements "that don't make sense" and thus, chosen to obey requirements of its choosing and to disregard others. It is also readily apparent that the Village lacks the necessary commitment to come into compliance. The Board notes the violations are ongoing in nature and with the exception of some apparent corrections concerning the water supply, the violations persist. After evaluating all the facts and circumstances, as well as all of the testimony and exhibits, the Board finds that a $3000 fine is appropriate to aid in the enforcement of the Act. Because of the Village's intransigency in correcting its numerous violations, the Board will also provide for an additional $1000 per month penalty, not to exceed a total of $7000, to be paid by the Village for each month it delays in taking steps to abate the violations beyond an initial nine months leeway period. Accordingly, the Board will retain continuing jurisdiction of this proceeding.

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

ORDER

1. The Board finds that the Village of Orangeville has violated Sections 12(a), 12(b), 12(f), 15 and 18 of the Illinois Environmental Protection Act and 35 Ill. Adm. Code 304.120(a), 304.106, 302.203, 309.102, 309.202(a), 309.203, 602.101(a) and 602.102.

2. The Village of Orangeville shall cease and desist from further violations of the Act, the Board's regulations and its NPDES permit.

3. Within 30 days of the date of this Order, the Village of Orangeville shall, by certified check or money order, pay a civil penalty of $3000 payable to the State of Illinois and designated for deposit into the Environmental Protection Trust Fund, which is to be sent to:

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

4. Within 9 months of the date of this Order, the Village of Orangeville shall:

   a. Provide and install equipment to test for TSS and begin monitoring and reporting TSS and fecal coliform to the Agency in accordance with its NPDES permit;

   b. Submit Construction and Operating permit applications to the Agency for its sludge spreading operation in accordance with 35 Ill. Adm. Code 309.202(a) and 309.203;

   c. Submit an "as built" permit application to the Agency for the water main extension; and

   d. Install a padlock on the water tower and install a master water meter.

5. Within 9 months of the date of this Order, the Village of Orangeville shall submit to the Agency a Sewer System Evaluation Survey (SSES) identifying the sources of excess infiltration and inflow (I/I) and other factors contributing to its wastewater treatment facility's operational problems. Within 12 months of the date of this Order, the Village shall submit to the Agency a plan, with increments of progress, to reduce I/I and

other factors identified in the SSES to levels which will achieve compliance with the water pollution regulations. The plan shall provide for compliance within a maximum of 18 months from the date of this Order.

6. Should the Village of Organgeville fail to correct any of the violations enumerated in paragraph 4 above within 9 months of the date of this Order, or fail to comply with the provisions of paragraph 5, it shall pay an additional $1000 per month for each month of delay. However, in no event shall the penalties payable under this paragraph exceed $7000. Such penalties shall be paid in like manner and to the same address as provided in paragraph 3 of this Order.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 5th day of December, 1985, by a vote of 7-0.

Dorothy M. Gunn

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board