ILLINOIS POLLUTION CONTROL BOARD
April 14, 1977

JOSEPH T. ENDERS, Complainant,	)	
v.	)	PCB 75-283
VILLAGE OF GLENDALE HEIGHTS, Respondent.	)	

Mr. Joseph T. Enders, Complainant, appeared pro se;

Messrs. Theodore E. Cornell III and Kenneth J. Gumbiner, Attorneys, appeared for the Respondent.

OPINION AND ORDER OF THE BOARD (by Mr. Zeitlin):

This matter was initiated by the filing of a formal Complaint by Complainant Joseph T. Enders (Mr. Enders) on July 24, 1975. That Complaint, along with supporting letters from private citizens, alleged that Respondent Village of Glendale Heights (Glendale Heights) had violated Section 9(a) of the Environmental Protection Act (Act) and this Board's Order in a previous case, in the operation of a sewage treatment plant (STP), throughout a period beginning in 1972 and ending with the filing of the Complaint. Ill. Rev. Stat., Ch. 111-1/2, §1009(a)(1976). Enders v. Glendale Heights, PCB 72-252, 5 PCB 683 (1972). Section 9(a) of the Act contains the statutory prohibition of air pollution; the previous case, PCB 72-252, entailed a finding of violation of Section 9(a) by the Village of Glendale Heights, and specific Orders with regard to the abatement of that odor violation. See also, EPA v. Glendale Heights, PCB 70-8, 1 PCB 217 (1971).

On August 7, 1975, the Board entered an Interim Order which consolidated this matter with a then-pending Variance case, Glendale Heights v. EPA, PCB 75-180 (November 6, 1975). That Interim Order also struck from the Complaint the alleged violation of our earlier Order in PCB 72-252, supra, noting that, "The proper forum to compel compliance with prior Board Orders is...the Circuit Court..."

Two additional Interim Orders were entered on August 28, 1975. The first of those Orders severed the instant case from PCB 75-180, supra, the Variance case; the second denied a Motion to Strike and Dismiss filed by Respondent.

Again on September 18, 1975, two Interim Orders were entered: The first denied Complainant Enders' Motion for Reconsideration of our August 28, 1975 Interim Order separating the Enforcement and Variance cases; the second decided a Motion for Interlocutory Appeal brought by Respondent from certain rulings of the Hearing Officer.

A further Interim Order, entered November 26, 1975, denied a motion appealing additional orders of the Hearing Officer, and upheld his decisions. Additional Interim Orders entered January 8 and February 11, 1976, granted Leave to File an Interlocutory Appeal, and again upheld certain actions of the Hearing Officer, respectively.

Public hearings were held in this case on the following dates: December 6, 1975; March 5, April 3, April 10, and April 27, 1976. The record in this matter is extensive, containing (in addition to the 1,253 pages of transcript of those hearings) a considerable quantity of documentary exhibits. A number of citizens appeared for both Complainant and Respondent, and both sides attempted to introduce technical and scientific evidence through expert and lay witnesses.

Following the close of the hearings, several motions were made by both parties, which were explicitly left by the Hearing Officer for Board decision. The Board has determined that action on the following motions is necessary or helpful, and takes the action indicated:

> Complainant's Request to Enter Document, filed May 4, 1976, is denied.
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> Complainant's Motion to Correct Record, filed July 7, 1976, is granted.
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> Complainant's Motion to Reconsider Hearing Officer's Ruling, filed July 7, 1976, is denied.
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> Complainant's Motion for Reconsideration, filed August 18, 1976, is denied.
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> Complainant's Motion to Exclude Respondent's Brief from the Record, filed August 18, 1976, is denied.
>
> Complainant's Motion to Exclude the Hearing Officer's letter (concerning witness credibility), filed August 19, 1976, is denied.

Any remaining motions are determined to be moot (e.g., Motion for Ruling of August 20, 1976), or immaterial, in light of our findings herein on the merits of the case.

The essence of this case consists of the following two allegations by Mr. Enders:

> 1. Operations at the Glendale Heights STP have caused noxious odors over the last several years, resulting in serious, widespread interference with the enjoyment of life and property of those individuals residing in the area surrounding the STP.
>
> 2. Operation of the Glendale Heights STP has caused, and continues to cause, the emission of aerosols containing pathogenic viruses and bacteria, resulting in a health hazard for the surrounding residents, as well as to children attending a school located immediately adjacent to the plant.

The relief sought by Mr. Enders is a requirement that Glendale Heights cover the STP's treatment tanks and scrub the off-gases.

Complainant's burden with regard to an odor allegation has been previously stated by the Board:

1. Was there in fact an odor?

2. Was that odor caused by Respondent's STP?

3. Did that odor result in interference with the lives, environment, enjoyment of property, etc., of the citizens affected?

4. Was such interference unreasonable, such unreasonableness being measured, in part, by the criteria in §33(c) of the Act. People v. North Shore Sanitary District, PCB 74-223, 74-229 (Consol.), 19 PCB 192 (1975). See, City of Monmouth v. PCB, 57 Ill.2d 482, 313 N.E.2d 161, 163 (1974); Mystik Tape v. PCB, 60 Ill.2d 330 (1975); Processing and Books, Inc. v. PCB, 64 Ill.2d 68 351 N.E.2d, 865 (1976).

We determine that the burden with regard to Complainant's allegation of dangerous bacterial and viral aerosol emissions is essentially the same as that for odor, supra. Complainant must show the existence and nature of the aerosol emissions, and that such emissions do in fact pose a serious potential threat to the health of those affected. However, absent an actual showing of adverse health effects, the potential for or probability of such effects must be demonstrated by acceptable scientific evidence. See, e.g., Draper and Kramer, Inc. v. PCB, 40 Ill.App.3d 918, 353 N.E.2d 106, 109 (1976).

Turning to the merits of the case, we shall discuss first the alleged aerosol emissions.

Complainant's case on the existence of possibly or potentially harmful aerosol emissions is based largely on the testimony of Dr. Hutton D. Slade, a professor of microbiology at Northwestern University. The principal documentary basis for the allegation is a report prepared by Dr. Slade for the City of Des Plaines concerning possible health aspects of sewage treatment plant operations, (Complainant's Ex. 1, R. 147). It is Complainant's and Dr. Slade's contention that that report -- constituting a summary of scientific literature on the spread of bacterial and viral infections from sewage treatment plants -- would apply to operations at the Glendale Heights STP, (R. 151). It is claimed that aerosols are generated in sizes that are capable of entering the smallest portions of the lungs, and that these minute droplets are likely to contain the same pathogenic microorganisms present in STP influents, (e.g., R. 199-202, 236-238, 247, 301-303).

Dr. Slade's testimony is simply insufficient, by itself, to support any finding that the operation of the Glendale Heights STP does, in fact, pose any real, potential, or possible health hazard. The witness was unclear as to whether the alleged hazard would be "possible" or "potential," (e.g., R. 156-157). No independent research was done for the report, (id.). Although the witness stated at one point that his report stands for the fact that there are adverse effects from sewage treatment plants generally, (R. 156), that statement was repudiated at a subsequent hearing, (R. 293). In addition, Dr. Slade's testimony was directly contradicted by an equally credible witness for the Respondent, (e.g, R. 994-1000).

Complainant's documentary offerings are of no greater use. It is clear from testimony that there are widely differing views in the scientific community on the subject of possible aerosol hazards, (e.g., R. 207, 183, 280, 333, 1000). Even if the Board were to accept completely all of the documentary evidence offered by Respondent, sufficient questions would remain to preclude any finding of violation under §9(a) of the Act. However, many of the documentary exhibits offered by Complainant could not be admitted -- on any of several grounds.

Even if the test for a finding of violation under §9(a) with regard to aerosol emissions were relaxed, the record would be insufficient to support a finding of violation. The inconclusiveness of the scientific testimony is accompanied by a complete failure of the Complainant to demonstrate any actual, physical harm caused by the STP. In fact, the testimony received in this regard was to the contrary, (e.g., R. 1124). Although Mr. Enders attempted to show that either the odor or the aerosol problems may have caused illness in one case, (e.g., R. 66, 226), that testimony concerned an individual already terminally ill with cancer.

No conclusive or substantive finding of violation with regard to the alleged aerosol hazard can be found.

Turning next to the large body of testimony with regard to the alleged odor violations, we must reach the same conclusion. The record contains extensive testimony on the presence or lack of odors. It also contains extensive testimony as to the presence or absence of improper operating methods or other conditions likely to cause odors. That evidence is inconclusive, although it does raise the possibility that an odor may have existed during the period covered by the Complaint.

The testimony brought to show the existence of an odor, as well as the alleged unreasonable interference caused by that odor, is directly contradicted by equivalent contrary evidence brought by Respondent. While many of the Complainant's witnesses alleged that a foul and noxious odor forced them to remain indoors or install air-conditioning (e.g., R. 82, 111, 118, 129, 370, 432, 473), Respondent's witnesses testified that they have detected no odor, or at least no objectionable odor, during the period covered by the Complaint, (e.g., R. 564, 643, 666, 688, 1134, 1158). In addition, at least two of Complainant's witnesses equivocated on either the nature or the effect of the alleged odor, (e.g., R. 46, 73). Standing alone, the testimony is inconclusive.

There are two additional factors which support our decision that the testimony is not sufficient to support a §9(a) violation. First, the Hearing Officer's opinion as to credibility, filed on May 3, 1976, states:

> In my opinion, Complainant Joseph T. Enders' testimony concerning the extent to which the odors from the plant interfered with his enjoyment of his property was not credible.
>
> I also do not accept the testimony of his other witnesses concerning the degree to which the odors interfered with or prevented the use of their property.
> ...

Although Complainant sought (Motion of August 19, 1976) to have the Hearing Officer's letter stricken as improper under the Procedural Rules, we have denied that Motion, supra. Although the final paragraph of the Hearing Officer's letter does approach the Board's function rather than the Hearing Officer's, there is no deficiency here to require that the mandatory findings as to credibility be stricken. Careful reading of the record indicates that the Hearing Officer made every possible attempt to allow Complainant and his witnesses to show the existence, extent, and effects of the alleged odors. The Hearing Officer allowed such latitude, and went to such lengths to protect Complainant's case, that we can find no trace of any hostility towards the Complainant or his case. We accept the Hearing Officer's statement as to credibility.

Secondly, the testimony presented by Complainant seems questionable in light of cross-examination of Complainant himself at the fourth hearing. It seems quite possible from Mr. Enders' responses to cross-examination that many of the surrounding residents' objections to the Glendale Heights STP may have been initiated by the Complainant himself.

Complainant's case with regard to the existence of operational and maintenance practices at the STP which could lead to the existence of noxious odors, may be disposed of summarily. Complainant failed to show the existence or any regular or continuing practices at the plant, since 1972, which would lead to the existence of the regularly-occurring odors complained of by him and his witnesses, (e.g., R. 589-624).

In summary, the evidence shows clearly that an odor did exist prior to 1972 -- a period not covered by the Complaint in this case. That odor was the subject of a prior case, and need not be discussed again here. See, PCB 72-252, PCB 70-8, supra. In addition, the evidence shows that there may occasionally be some mild odor in the area of the STP. Testimony presented by both sides, including some admissions by Respondent, (e.g., R. 394), indicates that there may have been conditions which may have led to odors.

Expert testimony by a representative of the Environmental Protection Agency, (R. 730, 811), indicated that a well-run STP is unlikely to cause noxious odors (although all STPs may have some mild odor); Glendale Heights being one of the five best-run of 200 STP's in the state, no serious odor problem is to be expected.

Although the record indicates that Glendale Heights has continued to improve procedures for monitoring plant operations, (e.g, the installation of a new alarm and surveillance system, (R. 617, 597), the responsibility rests with Glendale Heights to insure the proper and efficient operation of the sewage treatment plant.

Complainant having failed to meet his burden of proof, as set out above, the Complaint must be dismissed.

ORDER

IT IS THE ORDER OF THE POLLUTION CONTROL BOARD that the Complaint in the instant matter be dismissed.

Mr. Jacob D. Dumelle concurs.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 14th day of April, 1977, by a vote of 5-0.

Christan L. Moffett
Christan L. Moffett, Clerk
Illinois Pollution Control Board