

ILLINOIS POLLUTION CONTROL BOARD
November 16, 1978

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) PCB 78-36
)
CITY OF PONTIAC, an Illinois)
municipal corporation, and)
PONTIAC REALTY, INC., an)
Illinois corporation,)
)
Respondents.)

MR. PATRICK J. CHESLEY, ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF THE COMPLAINANT.

MR. ROBERT R. CAUGHEY, ATTORNEY AT LAW, APPEARED ON BEHALF OF THE CITY OF PONTIAC, RESPONDENT.

MR. JOHN BEYER, ATTORNEY AT LAW, APPEARED ON BEHALF OF PONTIAC REALTY, INC., RESPONDENT.

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

This matter comes before the Board on the February 6, 1978 Complaint brought by the Illinois Environmental Protection Agency ("Agency") which alleged that: (1) Respondents, the City of Pontiac and Pontiac Realty, Inc., have allowed the use of a sanitary sewer extension without having been issued an operating permit by the Agency in violation of Rule 952(a) of Chapter 3: Water Pollution Regulations and Section 12(a) of the Illinois Environmental Protection Act ("Act") from March 21, 1977 until August 25, 1977; and (2) the Respondent, the City of Pontiac, has violated Special Conditions numbers 1 and 2 of Permit No. 1976-HB-89-C and, therefore, Section 12(b) of the Act from March 21, 1977 until August 25, 1977. A hearing was held on June 23, 1978. The parties filed a Stipulation and Proposal for Settlement on September 13, 1978.

The City of Pontiac is an Illinois municipal corporation located in Livingston County. Pontiac Realty, Inc. is a Delaware corporation which is authorized to do business in Illinois.

Country Club Manor and Walden West are located within the City of Pontiac. A sanitary sewer extension was constructed to serve Country Club Manor and Walden West. The necessary construction permit for this sanitary sewer extension was issued by the Agency to the City of Pontiac as Construction Permit No. 1976-HB-89-C. The City of Pontiac allowed Pontiac Realty, Inc. to have the sanitary sewer extension to Country Club Manor and Walden West constructed under the City's Construction Permit No. 1976-HB-89-C. (Stipulation, p. 1-2).

Special Condition No. 1 of the City of Pontiac's Construction Permit No. 1976-HB-89-C provides that "... the construction of the proposed sanitary sewer shall be stopped at least 10 feet from the connection point of the proposed sanitary sewer to the existing sanitary sewer, and said last 10 feet of sanitary sewer and the connection to the existing sewer shall not be made until a permit to operate the proposed sewer is issued by this Agency." (Stipulation, p. 3). Schedule C sewer extension (construct only), which is incorporated by reference into Special Condition No. 1, provides in pertinent part that:

"1. The permit allows conditional construction only. The sewer may not be used nor may the discharge of any waste into or out of the proposed sewer itself be allowed under this permit.

2. Connection, operation or use of the sewer extension may be done only after securing written permission in the form of a 'Permit to operate' from the Agency." (Stipulation, p. 3-4).

Special Condition 2 of the City of Pontiac's Construction Permit No. 1976-HB-89-C provides as follows: "Other than the exceptions designated in the provisions of the Water Pollution Regulations of Illinois no connections may be made to this sewer project without a permit from this Agency. In addition, any exception may not be made unless and until an operating permit for the main sewers has been issued by this Agency." (Stipulation, p. 4).

Since at least March 21, 1977 and until August 25, 1977, the 10 feet of the sanitary sewer extension nearest the existing sewer of the City of Pontiac have been installed and connected to the existing sanitary sewer. During this time period, the sanitary sewer extension has been connected to two eight unit condominiums in Country Club Manor. (Stipulation, p. 4). Pontiac Realty, Inc. had the two eight unit condominiums in Country Club Manor constructed upon land which it owned. Prior to March 21, 1977, Pontiac Realty, Inc. sold six units in the condominiums. From at least March 21, 1977 to August 25, 1977, the six units in the

condominiums that were sold were occupied. The waste water generated by the occupancy of the six units in the condominiums flowed into the sanitary sewer extension from at least March 21, 1977 to August 25, 1977. (Stipulation, p. 5).

It was the belief of the City of Pontiac and Pontiac Realty, Inc. that a plug existed in the sanitary sewer extension which would have prevented the waste water from the two condominiums from entering the existing sewers of the City of Pontiac. In accordance with this view, Pontiac Realty, Inc. contacted Jack Meece to determine the length of time for which the sanitary sewer extension could be used for storage of the waste water from the condominiums before an overflow would occur. Pontiac Realty, Inc., also, contacted a person about removing the waste water from the sewer. (Stipulation, p. 5-6).

It is now the opinion of the parties that the plug was either removed by some unknown person or failed to work properly and that the waste water from the two condominiums flowed into the existing sewer system via the sanitary sewer extension to Country Club Manor. (Stipulation, p. 6).

From March 21, 1977 to August 25, 1977, neither the City of Pontiac nor Pontiac Realty, Inc. had a permit issued by the Agency which allowed the operation or use of the sanitary sewer extension. Pontiac Realty, Inc. and the City of Pontiac knew that an operating permit was needed prior to the use or operation of the sanitary sewer extension. (Stipulation, p. 6). From March 21, 1977 until August 25, 1977, the Agency would not issue an operating permit for the sanitary sewer extension because the sewage treatment plant of the City of Pontiac was on restricted status and any additional flow from the sanitary sewer extension would aggravate the overloaded condition. (Stipulation, p. 6). However, both parties agree that the increased environmental harm from the additional flow from the condominiums would be minimal. (Stipulation, p. 7).

The City of Pontiac and Pontiac Realty, Inc. applied for a variance from the permit requirement in PCB 76-250. By order of June 28, 1977, the Board denied the Respondents' request for variance. Pontiac Realty, Inc. had geared the sale and occupancy of the condominium units to the September, 1976 (i.e., the expected completion date of the improvements to the City of Pontiac's sewage treatment plant). After Pontiac Realty, Inc. learned that the sewage treatment plant would not be ready by September, 1976, it only sold and allowed one additional condominium unit prior to the time of the completion of the sewage treatment plant improvements. All other sales of condominium units after that date tied the date of occupancy to the completion of the sewage treatment plant improvements. (Stipulation, p. 7).

If Pontiac Realty, Inc. did not allow occupancy prior to August 25, 1977, it would have been required to find housing for six people who had sold their homes on the expectation that they would be able to move into the condominium units. For a short period prior to December 1, 1976, Pontiac Realty, Inc. housed several people in motels in the City of Pontiac. Pontiac Realty, Inc.'s reason for allowing occupancy of the condominiums and the discharge to the sanitary sewer extension was based on its concern for the people who would have to have been housed in motels and also on the economic costs which would have been incurred by Pontiac Realty, Inc. for such housing and additional feeding costs. (Stipulation, p. 8).

It is stipulated that the City of Pontiac was not involved in the construction of the sanitary sewer extension. The City of Pontiac obtained the construction permit in its name and then allowed Pontiac Realty, Inc. to have the sewers built. When the City of Pontiac learned that the 10 feet of the sanitary sewer extension nearest the existing sewer had been installed, it indicated to Pontiac Realty, Inc. that a plug should be placed in the sanitary sewer extension to prevent discharge to the existing sewers. (Stipulation, p. 8). It is both technically practicable and economically reasonable to obtain a permit for the operation of the sewers, and the requisite Agency permit was obtained on August 25, 1977. (Stipulation, p. 9).

The proposed settlement agreement states that the City of Pontiac and the Agency agree that, considering the nature of the violations, the involvement of the City of Pontiac, and the fact that an operating permit for the sanitary sewer extension has been obtained, a \$250.00 penalty for violations of Rule 952(a) of Chapter 3 and Section 12(a) of the Act and a separate \$250.00 penalty for violating Special Conditions numbers 1 and 2 of Permit 1976-HB-89-C is appropriate. Additionally, Pontiac Realty, Inc. and the Agency agree that a \$1,500.00 penalty for Pontiac Realty, Inc.'s violations of Rule 952(a) of the Board's Water Pollution Regulations and Section 12(a) of the Act is appropriate. (Stipulation, p. 9).

In evaluating this enforcement action and proposed settlement, the Board has taken into consideration all the facts and circumstances in light of the specific criteria delineated in Section 33(c) of the Illinois Environmental Protection Act. Incinerator, Inc. v. Illinois Pollution Control Board, 59 Ill. 2d 290, 319 N.E. 2d 794 (1974). On the basis of the record, the Board finds that the Respondents, the City of Pontiac and Pontiac Realty, Inc. have allowed the use of a sanitary sewer extension without having been issued an operating permit by the Agency in violation of

Rule 952(a) of Chapter 3: Water Pollution Regulations and Section 12(a) of the Act. The Board also finds that the Respondent, the City of Pontiac, has violated Special Conditions numbers 1 and 2 of Permit No. 1976-HB-89-C and, therefore, Section 12(b) of the Act. Accordingly, the City of Pontiac shall pay the stipulated penalty of \$500.00 and Pontiac Realty, Inc. shall pay the stipulated penalty of \$1,500.00.

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 Respondents, the City of Pontiac and Pontiac Realty, Inc., have allowed the use of a sanitary sewer extension without having been issued an operating permit by the Agency in violation of Rule 952(a) of Chapter 3: Water Pollution Regulations and Section 12(a) of the Illinois Environmental Protection Act.

2. The Respondent, the City of Pontiac, has violated Special Conditions numbers 1 and 2 of Permit No. 1976-HB-89-C and, therefore, Section 12(b) of the Illinois Environmental Protection Act.

3. Within 45 days of the date of this Order, the City of Pontiac shall pay the stipulated penalty of \$500.00 and Pontiac Realty, Inc. shall pay the stipulated penalty of \$1,500.00 . Payment shall be by certified check or money order payable to:

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

4. The City of Pontiac and Pontiac Realty, Inc. shall comply with all the terms and conditions of the Stipulation and Proposal for Settlement filed September 13, 1978, which is incorporated by reference as if fully set forth herein.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 16th day of November, 1978 by a vote of 3-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board