

ILLINOIS POLLUTION CONTROL BOARD  
September 15, 1977

ENVIRONMENTAL PROTECTION AGENCY )  
Complainants, )  
 )  
v. ) PCB 76-70  
 )  
 )  
VILLAGE OF CRAINVILLE, ROBERT CALLAGHAN )  
and RUTH CALLAGHAN d/b/a FREEBURG )  
CONSTRUCTION CO., and GEORGE KNOTSMAN, )  
JR. )  
Defendants. )

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

I. LEGAL BACKGROUND

This matter comes before the Board upon the March 8, 1976 Complaint of the Environmental Protection Agency (Agency) against the Village of Crainville (Crainville) charging violations of its Construction Permit and thereby Section 12(b) of the Environmental Protection Act (Act), Section 12(c) of the Act, and Rule 1201 of Chapter 3: Water Pollution and thereby Section 12(a) of the Act. An Amended Complaint was filed March 22, 1977, adding Robert Callaghan and Ruth Callaghan d/b/a Freeburg Construction Co. and George Knostman, Jr. as Respondents. A hearing was held on July 14, 1977.

II. FACTUAL BACKGROUND

On November 5, 1968, an agreement was signed for the construction of additions to the water and sewer system and improvements to the sewage treatment plant (STP) owned and operated by Crainville, located in Williamson County, Illinois. Freeburg Construction Co. was the general contractor, and engineering services were provided by George Knostman, Jr. and Associates. An Agency Construction Permit was received by Crainville in 1970. Construction began September, 1970 and terminated on January 1, 1972. Construction did not proceed according to the plans and specifications approved by the Agency. Sanitary sewer lines and manholes were installed at different locations and sewer lines were of a smaller size than permitted. Also, some manhole cover details were installed below street level. One of four planned lift stations was installed at a different location than permitted, and a fifth lift station, not planned at all, was constructed. All five lift stations were installed with equipment differing from that shown on the plans.

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Installation of chlorination equipment as well as fencing and seeding at the Crainville STP was not completed. The foregoing deviations, together with lack of proper controls, resulted in the repeated breakdown of pumps at several lift stations (causing sewage back-ups), overloading of Cell #2 of a two-cell treatment lagoon at the Crainville STP, and discharge of a poor quality effluent from the STP. In addition, the Agency will not grant a permit for connections to the 6" gravity sewer which was installed. The Agency was notified of these deviations in a 1973 study by John H. Crawford, P.E., but did not approve the changes.

Freeburg Construction Co. also installed a sewer extension to the east of Crainville to serve a new subdivision (R. 136). The sewer extension, which connects into the Crainville STP, was requested and paid for by the owner of the subdivision property and was built without plans or an Agency Construction Permit (R.19-20,136-137).

The Crainville STP serves a population of under 10,000. Except for a period of less than six months, the facility has not been operated by a certified Class 4 operator since 1974.

### III. DEVIATION FROM APPROVED PLANS

Standard Condition #2 of the Construction Permit awarded to Crainville prohibits any deviation from approved plans unless revised plans are submitted for Agency approval. No submission of revised plans or specifications occurred during the period of construction. As permit holder and owner of the completed sewer system and STP, Crainville is responsible for failure to comply with Standard Condition #2, not the contractor or engineer. The Village cannot delegate its responsibility to follow approved plans, especially since the Village Board of Crainville either approved the deviations (R.85) or caused them through purchases of non-specified equipment (R.25). Further, the contractor and engineer are hired merely to do specific work: the ultimate responsibility to obey the Act remains with the owner. Therefore, we find Crainville in violation of Section 12(b) of the Act and dismiss Count I of the Amended Complaint as to all other Respondents.

The Board has considered the Section 33(c) factors in assessing a penalty for this violation. Respondents have the burden of producing evidence concerning these factors. Processing and Books, Inc. v. Pollution Control Board, 64 Ill. 2d 68, 351 N.E. 2d 865 (1976). First, the character and degree of injury include sewage backups, poor quality effluent being discharged from the Crainville STP, and damage to the need for a viable permit system. Second, the sewers and STP clearly have great social and economic value, diminished somewhat by the failure to construct the system in a manner acceptable under the Act and Regulations. Third, the suitability of the site is beyond question. Finally, compliance by Crainville is both technically feasible and economically reasonable. We take note of the small population of the Village and its current financial difficulties. Based on these factors, the Board imposes no money penalty for this violation.

#### IV. SEWER EXTENSION

In 1971, a sewer extension and manhole located outside the village limits of Crainville (R.136) was constructed by Freeburg Construction Co. Crainville was involved in this construction only to the extent that they instructed Freeburg Construction Co. as to the placement of the sewer line and manhole (R.19). George Knostman, Jr. was not involved in any way (R.20). Freeburg Construction Co. should not be liable for failure to obtain a permit. The owner of the subdivision property, the proper permit holder, is alone responsible. The record shows that Mr. Merkin, the owner of the subdivision, was on notice of his duty to obtain Agency permits as he assured Crainville and Robert Callaghan that he had made the necessary arrangements with the authorities to construct and operate the sewer extension and manhole (R.136-137). Therefore, we find the Respondents not in violation of Section 12(c) of the Act and dismiss Count II of the Amended Complaint.

#### V. STP OPERATOR

The Agency requires the Crainville STP to have a certified Class 4 operator. Crainville has failed to provide a competent operator from September 1, 1974 up to the filing of this Complaint, except for a period of less than six months. We find Crainville in violation of Rule 1201 of Chapter 3: Water Pollution and Section 12(a) of the Act. The Board has considered the Section 33(c) factors in finding, and assessing a penalty for, this violation. In addition to the evidence discussed previously (*supra*, p.2), we take note of Crainville's efforts to obtain a competent operator (R.165). Based on these factors, the Board imposes no money penalty for this violation.

#### VI. "AS-BUILT" PLANS

In order to cease and desist from a violation of Section 12(b) of the Act, Crainville must submit "as-built" plans for Agency approval. We note that there was some controversy as to whether the Crawford study was a submission of "as-built" plans (R.88, 143). The Agency has sole authority to determine whether any documents submitted constitute "as-built" plans."

This Opinion and Order constitute the findings of fact and conclusions of law of the Board.

#### ORDER

It is the Order of the Pollution Control Board that:

1. Crainville is in violation of Section 12(b) of the Act.
2. Crainville is in violation of Section 1201 of Chapter 3: Water Pollution and Section 12(a) of the Act.

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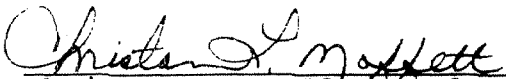
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3. Crainville shall cease and desist from all violations of the Act and Regulations found herein, within six months of the date of this Order or obtain a variance therefrom.
  
4. Crainville shall apply for all necessary Agency permits within 60 days of the date of this Order.

Mr. James Young abstained.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 15<sup>th</sup> day of September, 1977 by a vote of 3-0.

  
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Christan L. Moffett, Clerk  
Illinois Pollution Control Board