

ILLINOIS POLLUTION CONTROL BOARD
August 5, 1976

ENVIRONMENTAL PROTECTION AGENCY,)
)
 Complainant,)
)
 v.) PCB 75-507
)
)
 COUNTY OF LAKE, DEPARTMENT OF)
 PUBLIC WORKS,)
)
 Respondent.)

ORDER OF THE BOARD (by Mr. Goodman):

This matter comes before the Board upon the July 12, 1976 Motion by the Environmental Protection Agency (Agency) to reconsider the Board Order of June 18, 1976 herein. In its Motion the Agency requests that the Board reconsider its finding that there was no proof of violation of Rule 404, its Order imposing a penalty of \$300.00 and its failure to specifically order the Respondent County of Lake, Department of Public Works (County) to cease and desist from violating the Act and the Rules.

The Agency argues that the grab sample results entered as evidence in this case support a finding of violation of Rule 404 when that Rule is construed with Rule 401(c) which calls for a violation should any contaminant at any time exceed five times the numerical standards prescribed in Rule 404. In support of its argument the Agency cites Environmental Protection Agency v. Fosdick Poultry Processors, Inc., PCB 74-196, 16 PCB 183 (March 26, 1975). In that case the Board did find violation of Rule 404 through the five times limit of Rule 401(c).

The Board is now of the opinion that a violation of the five times Rule is a violation of 401(c) itself rather than Rule 404 as

construed with 401(c). The prohibition is included within 401(c); Rule 404 merely determines the levels at which 401(c) is violated. Therefore, the Board hereby overrules our decision in Fosdick (supra) to the extent that it is inconsistent with our holding today.

In this case Rule 401(c) was not mentioned in either the Complaint nor the Stipulation of Fact and Settlement Proposal filed May 17, 1976. The first mention of Rule 401(c) was contained in the Agency's argument subsequent to the hearing and the filing of the Stipulation. The Board finds that the County was prejudiced in its ability to answer the Complaint due to the lack of mention of Rule 401(c) either in the Complaint itself or during the hearing. The Board, therefore, affirms its opinion that a Rule 404 violation cannot be found.

The Board finds that the Agency's arguments concerning the penalty imposed in this case are not persuasive and affirms its Order of June 18, 1976 with respect to said penalty.

For the reasons stated in Section (c) of the Agency's Motion to Reconsider, the Board finds that a cease and desist Order is appropriate in this case. The Order in PCB 75-507 of June 18, 1976 is hereby amended as follows:

5. Respondent shall cease and desist from violating the Rules and Sections of the Act for which violations were found herein.

IT IS SO ORDERED.

I, Christian L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Order was adopted on the 5th day of August, 1976 by a vote of 5-0.



Christian L. Moffett, Clerk
Illinois Pollution Control Board