

ILLINOIS POLLUTION CONTROL BOARD  
September 20, 1979

ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Complainant, )  
 )  
v. ) PCB 78-133  
 )  
BOARD OF TRUSTEES, MURDALE WATER )  
DISTRICT, an Illinois public )  
corporation, DR. C. NORMAN GEYER, )  
EDWARD C. BERNHARDT, RICHARD L. )  
PETERMAN, RICHARD BRECHT, MAX L. )  
WEBEL, GORDON ISCO, MRS. KENNETH )  
SERFASS, WILLIAM CORACY, JAMES )  
WATKINS, JAMES CARLOCK, ROBIN MARCY, )  
EDMUND KUNCE, RICHARD RICHMAN, )  
CHARLES GARRISON, CHARLES WOELFEL, )  
JERRY KENNEDY, WILLIAM R. HAMILTON, )  
BARRY BEIN, JACOB J. METZGER, and )  
ALBERT SCWEGEL, as individuals, )  
 )  
Respondents. )

MR. BRIAN REYNOLDS, ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF THE COMPLAINANT.

RIDGWAY AND DECKER, ATTORNEYS AT LAW (MR. CHARLES W. DECKER, OF COUNSEL), APPEARED ON BEHALF OF THE RESPONDENT BOARD OF TRUSTEES, MURDALE WATER DISTRICT, an ILLINOIS PUBLIC CORPORATION.

FEIRICH, SCHOEN, MAGER, GREEN AND ASSOCIATES, ATTORNEYS AT LAW (MR. T. RICHARD MAGER, OF COUNSEL), APPEARED ON BEHALF OF RESPONDENT GORDON ISCO.

GILBERT AND GORDON, ATTORNEYS AT LAW (MR. JOHN G. GILBERT, OF COUNSEL), APPEARED ON BEHALF OF RESPONDENT DR. C. NORMAN GEYER.

TWOMEY & HINES (MR. GEORGE M. TWOMEY, OF COUNSEL), APPEARED ON BEHALF OF RESPONDENTS EDWARD C. BERNHARDT, RICHARD L. PETERMAN, RICHARD BRECHT, MAX L. WEBEL, MRS. KENNETH SERFASS, WILLIAM CORACY, JAMES WATKINS, JAMES CARLOCK, ROBIN MARCY, EDMUND KUNCE, RICHARD RICHMAN, CHARLES GARRISON, CHARLES WOELFEL, JERRY KENNEDY, WILLIAM R. HAMILTON, BARRY BAIN, JACOB J. METZGER, AND ALBERT SCHWEGEL.

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

This matter comes before the Board on the May 10, 1978 Complaint brought by the Illinois Environmental Protection Agency ("Agency"). The Complaint alleged that Respondent Board of Trustees, Murdale Water District ("District") is an Illinois public corporation which operates sanitary sewers and a single cell waste stabilization lagoon (i.e., the wastewater source) which treats the domestic sewage of the individual Respondent-homeowners who reside in the Fairway Vista Subdivision which is located approximately 3 miles west of Carbondale in Jackson County, Illinois. It is alleged that Respondent Dr. C. Norman Geyer has, at all times pertinent to this Complaint, maintained control over the land on which the wastewater source is located. Additionally, the Complaint alleged that, from July 1, 1970 until the date of filing of the Complaint, Respondents caused or allowed the sanitary sewers and the waste stabilization pond (the "facility") to transport water-carried human and related wastes into Mud Creek which is a tributary to the Big Muddy River.

Count I of the Complaint alleged that at no time since October 24, 1977 have any of the Respondents possessed an NPDES Permit for point source discharges and thus, by discharging contaminants and pollutants into the water of the State of Illinois from their wastewater source without possessing an NPDES Permit, the Respondents have violated Rules 901 and 902(e) of Chapter 3: Water Pollution Control Regulations ("Chapter 3") and Section 12(f) of the Illinois Environmental Protection Act ("Act").

Count II alleged that, on March 19, 1976, the effluent discharge from the facility caused Mud Creek (downstream from the discharge) to have an unnatural grayish color, a septic odor, unnatural bottom deposits, and an unnatural turbidity in violation of Rules 203(a) and 402, thereby violating Section 12(a) of the Act.

Count III alleged that, on March 19, 1976, the discharge from the Respondent's wastewater facility caused Mud Creek (downstream from the discharge) to contain an ammonia nitrogen (as N) concentration of 3 mg/l [which is twice the maximum concentration standard of 1.5 mg/l for ammonia nitrogen (as N)] in violation of Rules 203(f) and 402 of Chapter 3 and Section 12(a) of the Act.

Count IV alleged that, from December 27, 1972 until the date of filing of the Complaint (including, but not limited to, December 27, 1972, February 16, 1973, March 6, 1973, May 16, 1973, February 28, 1974, June 14, 1974, and March 16, 1976), the effluents discharged from the Respondent's wastewater facilities were of a color and/or turbidity above prescribed levels in violation of Rule 403 of Chapter 3 and Section 12(a) of the Act.

Count V alleged that, on February 28, 1974, June 14, 1974, and March 19, 1976, the effluents discharged from the facility contained excessive levels of BOD<sub>5</sub> and suspended solids in violation of Rules 401(c) and 404(f) and Section 12(a) of the Act.

Count VI alleged that, on December 27, 1972, February 16, 1973, March 6, 1973, December 9, 1975, and March 19, 1976, the discharged effluents contained excessive levels of fecal coliform in violation of Rules 401(c) and 405(c) of Chapter 3 and Section 12(a) of the Act.

Count VII alleged that, from April 16, 1972 until the date of the filing of the Complaint, the Respondents have failed to submit the requisite wastewater source operating reports to the Agency in violation of Rule 501(a) of Chapter 3 and Section 12(a) of the Act.

Count VIII alleged that, on March 19, 1976, the discharge from a raw sewage bypass of the wastewater facility caused Mud Creek (downstream from the discharge) to have an unnatural grayish color, unnatural bottom deposits, a septic odor, and excessive ammonia nitrogen concentration in violation of Rules 203(a), 203(f), 402, and 602(c) of Chapter 3 and Section 12(a) of the Act.

Count IX alleged that, from June 30, 1975 until October 23, 1977, the Respondents operated their facility without an Operating Permit from the Agency in violation of Rule 953(a) of Chapter 3 and Section 12(b) of the Act.

Count X alleged that, from July 27, 1973 until the date of filing of the Complaint, the Respondents operated their wastewater treatment works without an Agency certified operator in violation of Rule 1201 of Chapter 3 and Section 12(b) of the Act.

On May 31, 1978, the Board of Trustees of the Murdale Water District filed a Motion to Dismiss the Complaint as it relates to the District on the grounds that the District does not operate or have access to the sewage treatment facility or the real estate upon which the facility is situated because the developer, Mr. Marvin Muckelroy, did not complete the construction of the facility in accordance with approved plans and specifications and dedicate the facility to the District.

On June 2, 1978, the Agency filed its Response to this Motion to Dismiss. On June 8, 1978, the Board denied the District's Motion to Dismiss the Complaint. On June 19, 1978, Mr. Gordon Isco filed a Motion to Dismiss the Complaint as it relates to Respondent Isco on the ground that he was not currently residing as a home owner in the Fairway Vista Subdivision on the date that the Complaint was filed. On June 22, 1978, the Agency filed its Response to the Motion to Dismiss. On June 23, 1978, Respondent Gordon Isco filed a Rejoinder to the Agency Response to his Motion to Dismiss.

On June 30, 1978, the Agency filed a Motion to Amend its Complaint and an Amended Complaint. This Amended Complaint basically alleged that same violations but: (1) changed various dates of alleged violations in the Complaint to reflect the filing date of the Amended Complaint; (2) added three additional Respondents, Mr. Barry Bain, Mr. Jacob J. Metzger, and Mr. Albert Scwegel (Mr. Bain and Mr. Metzger are new home owners who resided in the Fairway Vista Subdivision

since April of 1978); (3) excluded two new home owners (Mr. Bain and Mr. Metzger) from the allegations charged in Counts II, III, V, VI, VIII, and IX of the Complaint, and (4) clarified the status of Mr. Gordon Isco and Mr. Charles Woelfel to reflect the fact that they are former home owners who resided in the Fairway Vista Subdivision at the time the alleged violations occurred.

On July 6, 1978, the Board entered an Order which granted the Complainant's Motion for Leave to File the Amended Complaint and the Board dismissed Respondent Isco's Motion to Dismiss. A hearing was held on August 3, 1979. The parties filed a Stipulation and Proposal for Settlement on August 20, 1979 and concurrently, the Agency filed a Motion to Dismiss without prejudice, as to Respondent Dr. C. Norman Geyer only, the Complaint in this matter. (See Joint Exhibit No. 2). The Board hereby grants the Agency's motion, and Dr. C. Norman Geyer will be dismissed as a Respondent in this case.

It is stipulated that in September of 1965, a developer, Mr. Marvin Muckelroy, proposed the construction of a sanitary sewage treatment facility to serve the Fairway Vista Subdivision and which, upon completion, was to be dedicated to the Murdale Water District for maintenance and operation. (Stip. 4). The Board of Trustees of the District agreed to accept Mr. Muckelroy's proposition upon final completion of construction in accordance with the approved plans and specifications at their meeting of September 29, 1965. Subsequently, the District and Mr. Muckelroy made a joint application to the Illinois Sanitary Water Board for the construction by Mr. Muckelroy and operation by the District of the sewage treatment facility. (See Exhibits A and B of the Stipulation and Proposal for Settlement). The Sanitary Water Board issued Joint Permit No. 1966-CA-251 to the District and Mr. Muckelroy on May 4, 1966 for the construction and operation of the facility. (See Exhibit C). Seven years later, on May 11, 1973, the Board of Trustees of the Murdale Water District sent a letter to the Agency in which the District indicated that it wanted to disassociate itself from the operation of the facility and claimed that since Mr. Muckelroy had not constructed or completed the facility in accordance with the plans and specifications previously submitted, the District was not bound to operate or maintain the sewage treatment plant. (See Exhibit D).

It is stipulated that the Agency subsequently issued a notice of violation to the Murdale Water District and on February 10, 1976, the District responded to this notice of violation. In its response, the District reiterated its previous position that the sewage system and treatment facilities had not been properly constructed (a condition precedent to the District's acceptance of the facility for operation) and stated it was not responsible for maintenance. In its letter of February 10, 1976, the District referred to a letter it had received from C. W. Klassen (Technical Secretary of the Sanitary Water Board) dated April 19, 1968 which stated the Sanitary Water Board's recognition that the District would not be held responsible for the maintenance of the sewage treatment facility until it was properly completed. (See Exhibits E, F, and G). Nevertheless, it is the position and claim of the present and former property owners in the Fairway Vista Subdivision that the Murdale Water District was

previously, and currently is, responsible for the maintenance and operation of the sewage system and treatment facilities. (Stip. 6).

It is also stipulated that the Respondents neither admit or deny the allegations contained in the Amended Complaint. (Stip. 7). The Board of Trustees of the Murdale Water District specifically denies that the District has ever caused or allowed the use or operation of the wastewater source in question. (See Exhibits D, F, and G). All remaining Respondents (with the exception of Dr. C. Norman Geyer) specifically deny that, as either present or past residents of the subdivision served by the wastewater source, they have ever caused or allowed the use of the wastewater source. These remaining Respondents contend that the Board of Trustees of the Murdale Water District is the responsible party, while the District denies any responsibility. (Stip. 7). However, all of the Respondents contended that the developer, Mr. Marvin Muckelroy (who died in April of 1976), is, in fact, the responsible party. It is stipulated that the Agency takes no position as to the various conflicting contentions of the Respondents as to who has the ultimate responsibility for the complained of wastewater source. (Stip. 7). The proposed settlement agreement reflects an attempt to avoid the inherent problems of attempting to join the estate of Mr. Muckelroy as a party Respondent to this cause and attempts to resolve the various differences of the parties by fashioning an environmentally acceptable solution to this problem.

This proposed settlement agreement provides that the Respondents agree to upgrade and maintain the facility so that its use and operation will be in compliance with the Board's Water Pollution Control Regulations and the Act by December 31, 1979. Furthermore, on June 12, 1979, the Respondents Edward C. Bernhardt, Richard L. Peterman, Richard Brecht, Max L. Webel, Mrs. Kenneth Serfass, William Coracy, James Watkins, James Carlock, Robin Marcy, Edmund Kunce, Richard Richman, Charles Garrison, Charles Woelfel, Jerry Kennedy, William R. Hamilton, Barry Bain, Jacob J. Metzger, and Albert Scwegel agreed to form a not-for-profit corporation which would be responsible for the use and operation of the facility (this not-for-profit corporation will be formed by the aforementioned Respondents within 14 days after notice of the Board's Order in this case). It is further agreed that the previously mentioned Respondents, or a not-for-profit corporation to be formed by them, will enter into a contract with the Board of Trustees of the Murdale Water District wherein the District agrees to construct an upgraded facility and operate this wastewater facility for the Respondents or their not-for-profit corporation. Pursuant to this contract, these Respondents or their corporation will provide the necessary funds to the District to construct and upgrade the facility. The Murdale Water District will direct such construction, and, upon completion, will be responsible for the proper operation and maintenance of the facility subject to the provision of the contract. (See Exhibit I). The proposed plans for upgrading the facility

envison an estimated maximum project cost of \$43,415.00. (See Exhibit J). It is stipulated that the Respondents or their not-for-profit corporation and the Murdale Water District will apply to the Agency for all necessary permits prior to the construction and/or operation of the upgraded facility, will insure that a properly certified operator is employed to run the facility, and will submit all necessary reports to the Agency. Additionally, the parties have provided that their obligations to meet the specified time requirements may be extended due to various circumstances which are beyond the Respondents' control. (Stip. 10). Moreover, the Respondents agree to jointly and severally pay a stipulated penalty of \$200.00.

The Murdale Water District has asserted that it has entered into the Stipulation by way of compromise to resolve a present problem which grew out of a "prior limited involvement of the District with the Fairway Vista Subdivision application for a permit" and states that it is not intended that this limited involvement as an independent contractor will provide or constitute any precedent for future involvement of the District for any sewage related operations with others. (Stip. 11). The Agency takes no position as to the District's contentions in this regard. (Stip. 11).

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. The Board finds the stipulated agreement acceptable under Procedural Rule 331 and Section 33(c) of the Act. The Board orders that the Respondents shall upgrade and maintain their sewage treatment facility so that its use and operation will promptly come into compliance with the applicable provisions of Chapter 3: Water Pollution Control Regulations and the Act. Accordingly, the Respondents shall jointly and severally pay the stipulated penalty of \$200.00.

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 shall upgrade and maintain the sewage treatment facility so that its use and operation will promptly come into compliance with the applicable provisions of Chapter 3: Water Pollution Control Regulations and the Act.


2. Dr. C. Norman Geyer is hereby dismissed as a Respondent in this case.

3. Within 30 days of the date of this Order, the Respondents shall jointly and severally pay the stipulated penalty of \$200.00, payment to be made by certified check or money order to:

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

4. The Respondents shall comply with all the terms and conditions with the Stipulation and Proposal for Settlement filed on August 3, 1979, which is incorporated by reference as if fully set forth herein.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order were adopted on the 20<sup>th</sup> day of September, 1979 by a vote of 5-0.

  
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Christan L. Moffett, Clerk  
Illinois Pollution Control Board