

ILLINOIS POLLUTION CONTROL BOARD
September 4, 1980

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	PCB 78-132
)	
VILLAGE OF MILLSTADT,)	
a municipal corporation, and)	
TESTING, ANALYSIS, AND)	
CONTROL, INC., an Illinois)	
corporation,)	
)	
Respondents.)	

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

JENNINGS, TEDESCO & FLYNN, ATTORNEYS AT LAW (MR. DONALD L. TEDESCO, OF COUNSEL), APPEARED ON BEHALF OF THE RESPONDENT, THE VILLAGE OF MILLSTADT.

MR. ANTHONY B. CAMERON, ATTORNEY AT LAW, APPEARED ON BEHALF OF THE RESPONDENT, TESTING, ANALYSIS, AND CONTROL, INC.

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

This matter comes before the Board on the May 10, 1978, Complaint brought by the Illinois Environmental Protection Agency ("Agency"). On May 19, 1978, the Agency filed a Motion to Supplement its Complaint (to add Exhibit A--a copy of its NPDES Permit which was inadvertently omitted). On May 25, 1978, the Board granted the Agency's Motion to Supplement its Complaint. On June 9, 1978, the Agency filed a Notice of its Correction of a Clerical Error.

On July 5, 1978, the Village of Millstadt (the "Village" or "Millstadt") filed a Counterclaim against Testing, Analysis and Control, Inc. (the "Company"). Additionally, the Village filed its Answer to the Agency's Complaint on July 5, 1978. On July 3, 1978, the Company filed a Special Appearance and a Motion to Dismiss For Want of Jurisdiction. On July 10, 1978, the Agency filed its Response to the Motion to Dismiss. On July 11, 1978, the Agency filed its Response to the Village's Answer and a Motion to Strike the Village's Counterclaim.

On July 20, 1978, the Board entered an Order which:
(1) dismissed the Village's counterclaim against the Company, and
(2) directed the Hearing Officer to stay any proceedings in this matter as to all parties and to establish a schedule for the submission of legal briefs by the parties on the question of jurisdiction raised in the Company's Motion to Dismiss for Want of Jurisdiction.

On August 21, 1978, the Company filed its brief (i.e., a Memorandum in Support of the Motion to Dismiss for Want of Jurisdiction). On September 1, 1978, the Agency filed its Brief in Opposition to the Motion to Dismiss. On September 7, 1978, the Board entered an Order denying the Company's Motion to Dismiss.

On November 16, 1978, the Agency filed a Motion for Leave to File an Amended Complaint and an Amended Complaint. On January 18, 1979, the Board granted the Agency's Motion for Leave to File an Amended Complaint.

Count I of the Amended Complaint alleged that, on February 3, 1978, the Village allowed a bypass of discharge from its municipal wastewater treatment plant (the "plant" or "facility") and failed to notify the Agency in writing within 72 hours of this diversion of flow of discharge to the holding lagoon in violation of its NPDES Permit, Rule 901 of Chapter 3: Water Pollution Control Regulations ("Chapter 3"), and Section 12(f) of the Illinois Environmental Protection Act ("Act").

Count II alleged that, from December 1, 1977 until April 6, 1978, the Village failed to operate its facility in such a manner as to minimize upsets and discharges of excessive pollutants (i.e., by failing to have any replacement parts on hand to repair broken or damaged equipment; by allowing a non-permitted bypass to occur; by allowing a non-permitted discharge from the holding lagoon; and by failing to properly maintain the facility's holding lagoon) in violation of its NPDES Permit, Rule 901 of Chapter 3, and Section 12(f) of the Act.

Count III alleged that the Company and the Village failed to sufficiently treat the diversion before allowing a discharge from the plant on March 17, 1978 which caused a tributary of Douglas Creek (downstream from the discharge) to have an unnatural grayish color, unnatural turbidity and an ammonia nitrogen (as N) concentration of 7.7 mg/l in violation of Rules 203, 402, and 602(c) of Chapter 3 and Section 12(a) of the Act.

Count IV alleged that the Company and the Village allowed the discharge from the facility to cause the plant's receiving stream to have an unnatural turbidity, odor, and an excessive ammonia nitrogen concentration in violation of Rules 203 and 402 of Chapter 3 and Section 12(a) of the Act.

Count V alleged that the Company and the Village allowed, on 3 separate occasions, effluents to be discharged from the plant which were offensive discharges in that color, odor and turbidity were not reduced below obvious levels in violation of Rule 403 of Chapter 3 and Section 12(a) of the Act.

Count VI alleged that the Company and the Village allowed, on 3 separate occasions, effluents to be discharged from the facility which exceeded the numerical standards for BOD₅ and suspended solids in violation of Rules 401(c) and 404(f) of Chapter 3 and Section 12(a) of the Act.

Count VII alleged that the Company and the Village allowed, on 2 separate occasions, effluents to be discharged from the plant which exceeded the numerical standards for fecal coliform in violation of Rules 401(c) and 405 of Chapter 3 and Section 12(a) of the Act.

Count VIII alleged that, from December 1, 1977 until April 6, 1978, the Company and the Village failed to operate the facility in such a manner as to minimize violations of applicable standards during such contingencies as adverse weather and equipment malfunctions in violation of Rule 601(a) of Chapter 3 and Section 12(a) of the Act.

After the various discovery motions were filed, a hearing was held on April 25, 1979. The parties filed a Stipulation and Proposal for Settlement on May 25, 1979. However, on August 9, 1979, the Board entered an Order which rejected the settlement proposal because of the proposed suspended penalty.

On June 12, 1980, another hearing was held. On July 29, 1980, the Agency and the Village filed their Stipulation and Proposal for Settlement (See: Joint Exhibit No. 3). Concurrently, on July 29, 1980, the Agency and the Company filed their Stipulation and Proposal for Settlement (See: Joint Exhibit No. 4).

The Village of Millstadt is a small community in St. Clair County, Illinois which has a population of approximately 2,200 individuals. Its municipal wastewater treatment plant discharges effluents into the South Branch of Douglas Creek, a navigable Illinois water, pursuant to NPDES Permit No. IL 0032514. (See: Exhibit A).

On August 16, 1976, the Village entered into a written agreement with Testing, Analysis and Control, Inc. in which the Company was to render certain services in connection with the maintenance and operation of the Village's plant for a basic annual charge of \$17,400.00 per year, payable at the rate of \$1,450.00 per month. (See: Exhibit B).

It is also stipulated that, from January 21, 1978 until March 21, 1978, the clarifier at the facility was out of service. As a result of this situation, all flow of discharge at the plant was diverted into the facility's holding lagoon. Full service was restored at the plant on April 4, 1978. (Jt. Ex. 4, p. 4).

The Company has indicated that, although its employees believed that all discharge valves from the plant's holding lagoon were closed, the lowest discharge pipe's valve was inadvertently left in a partially opened position. The flow into the lagoon reached the level of that discharge pipe by February 3, 1978, and a discharge from the lagoon occurred. On February 7, 1978 and March 6, 1978, Agency personnel inspected the lagoon and found that a trickle discharge was occurring. When the Company's employees again inspected the four discharge valves, they found that the second lowest discharge pipe was allowing a discharge of flow from the lagoon. Their attempts to close the valve were futile (indicating the gate valve to be possibly defective or blocked in a partially opened position). (See: Jt. Ex. 4, p. 4-5).

Additional Agency inspections on March 17, 1978 and March 31, 1978 revealed that the holding lagoon was improperly discharging effluents. On April 7, 1978, the lagoon-to-plant pipe was opened to begin treating the partially treated lagoon flow and, by April 10, 1978, the holding lagoon level had dropped to a point where discharges from the lagoon into the South Branch of Douglas Creek had ceased. (Jt. Ex. 4, p. 5).

It appears that the clarifier at the plant became jammed and inoperative when the skimmer arm of the clarifier broke off and fell into the tank. The Agency contends that the Company could have alleviated this problem and brought the clarifier back into service at a much earlier date by: (1) fully draining the clarifier tank and initiating the necessary repairs prior to the formation of any ice covering; or (2) enclosing the clarifier tank in a tarp and pumping heat (or using space heaters) in the enclosed area (thereby melting the ice in the tank and allowing the requisite repairs). On the other hand, the Company contends that, under the existing sub-zero weather conditions with the concomitant snow and ice, it acted with all reasonable diligence in performing the necessary repairs on the clarifier. The Company notes that, because of the adverse and inclement weather conditions, it was unable to fully inspect the lagoon discharge pipes to insure that the pipes were fully closed and it was hindered in making the requisite repairs. (Jt. Ex. 4, p. 5).

It is stipulated that, from 1975 until June, 1978, the Village's facility generated about \$115,000.00 income from residential sources and \$13,000.00 income from industrial and/or commercial sources, while its operation and maintenance costs were approximately \$97,000.00. (See: Joint Exhibit No. 3, p. 5). The total cost to correct the problems at the plant (including labor costs, manpower hours expended, and replacement parts' cost) was about \$2,000.00.

The Agency contends that, as a result of the clarifier being out of service from January 21, 1978 until March 21, 1978, and the subsequent diversion of discharges into the holding lagoon, the Village has violated its NPDES Permit, the Board's Water Pollution Control Regulations, and the Act. These alleged violations have been documented by laboratory analysis of water samples taken at the Village's wastewater treatment facility. (See: Exhibits C, D, E, F, G, and H).

The proposed settlement agreement between the Village and the Agency provides that the Village: (1) neither admits nor denies the allegations contained in Counts I through VIII of the Amended Complaint; (2) agrees that its contract with the Company does not relieve the Village of its obligation under the Act to exercise control over those who operate the plant; and (3) agrees to pay, jointly and severally with the Company, a stipulated penalty of \$1,000.00 . (Jt. Ex. 3, p. 6).

The proposed settlement agreement between the Company and the Agency provides that the Company admits all allegations contained in Count III and Count V of the Amended Complaint and agrees to: (1) immediately cease and desist from all further violations; (2) insure the effective and proper sealing of the holding lagoon discharge valves (so long as the Company operates the facility); and (3) pay, jointly and severally with the Village, a stipulated penalty of \$1,000.00 . (Jt. Ex. 4, p. 6-7).

It is also stipulated that, in order to insure that no possibility of similar discharge occurs in the future, the Company has sealed (by the use of a concrete grout) three discharge pipes from the holding lagoon--leaving only the top overflow pipe from the holding lagoon operative. (Jt. Ex. 4, p. 6). The Company believes that this measure will result in the lagoon having the capacity of holding over 6 months of total sewage flow with no possible discharge from the lagoon (except to the facility for final treatment).

In evaluating this enforcement action and the two proposed settlement agreements, the Board has taken into consideration all the facts and circumstances in light of the specific criteria delineated in Section 33(c) of the Act. The Board finds both of the stipulated agreements acceptable under Procedural Rule 331 and Section 33(c) of the Act.

The Board finds that the Respondent, Testing, Analysis and Control, Inc., has violated Rules 203, 402, 403, and 602(c) of Chapter 3: Water Pollution Control Regulations and Section 12(a) of the Act. Counts IV, VI, VII and VIII of the Amended Complaint are hereby dismissed as against the Respondent Company. The Company is ordered to immediately cease and desist from further violations of Chapter 3 and the Act. The Company is ordered to insure the effective and proper sealing of the holding lagoon discharge valves (so long as the Company operates the Village of Millstadt's municipal wastewater treatment plant).

The Board also finds that the Village of Millstadt, by virtue of its contract with the Company pertaining to plant operation and maintenance, has not been relieved of its obligation under the Act to exercise due control over those to whom the actual day-to-day plant operation has been delegated to insure that violations of the Board's Water Pollution Control Regulations and the Act do not occur. Accordingly, Respondent Village of Millstadt and Respondent Testing, Analysis and Control, Inc. are assessed, jointly and severally, the stipulated penalty of \$1,000.00 .

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. Respondent Testing, Analysis and Control, Inc. ("the Company") has violated Rules 203, 402, 403, and 602(c) of Chapter 3: Water Pollution Control Regulations and Section 12(a) of the Illinois Environmental Protection Act.
2. The Company shall immediately cease and desist from all further violations.
3. Counts IV, VI, VII and VIII of the Amended Complaint are hereby dismissed as against the Company.
4. The Company shall insure the effective and proper sealing of the holding lagoon discharge valves (so long as the Company operates the Village of Millstadt's municipal wastewater treatment plant).
5. Within 45 days of the date of this Order, the Respondent Testing, Analysis and Control, Inc. and the Respondent Village of Millstadt shall, by certified check or money order payable to the State of Illinois, jointly and severally pay the stipulated penalty of \$1,000.00 which is to be sent to:

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

6. The Respondents shall comply with all the terms and conditions of their respective Stipulations and Proposals for Settlement filed on July 29, 1980, which are 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 4th day of September, 1980 by a vote of 5-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board