

ILLINOIS POLLUTION CONTROL BOARD
September 18, 1980

ENVIRONMENTAL PROTECTION AGENCY,)
)
 Complainant,)
)
 v.) PCB 78-121
)
 JOHN J. STOREY, et al.,)
)
 Respondents.)

MR. REED NEUMAN, ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF THE COMPLAINANT.

MR. STEPHEN SCHRIMPF, QUACKENBUSH AND SCHRIMPF, APPEARED ON BEHALF OF THE RESPONDENT.

OPINION AND ORDER OF THE BOARD (by J. Anderson):

This matter comes before the Board upon the second amended complaint of 12 counts filed April 14, 1980 by the Environmental Protection Agency (Agency) against Respondents John Storey; Storeyland Homes, Inc; and John Storey, Rosemary Waltrip Storey, and Donald Broadway, Trustees of Tremont Subdivision. The Agency alleges that Respondents own and operate three sewage treatment plants, each of which is alleged to be in violation of Section 12 of the Environmental Protection Act ("Act") and various sections of Chapter 3: Water Pollution ("Chapter 3"). Hearings were held on November 30, 1979 and April 4, 1980 at which members of the public presented testimony. Pursuant to the Board's Interim Order of May 29, 1980, the Agency filed a closing brief on July 18, 1980. No brief was filed by Respondents.

At the close of the hearing, the Agency moved to dismiss John Storey, Rosemary Waltrip Storey, and Donald Broadway in their capacity as trustees of Tremont Subdivision on the grounds that "the evidence has not borne out their inclusion" (R. 421). The Agency's motion was improperly granted by the Hearing Officer, who lacks authority to do so (Rule 308(e)). However, this motion is hereby granted. Respondents moved to dismiss John Storey, individually, and Storeyland Homes, Inc. on similar grounds. Respondents' motion to dismiss Storeyland Homes, Inc. was joined into by the Agency in its closing brief. This motion is also granted, leaving John Storey individually as sole Respondent.

Counts one through four involve the sewage treatment facility servicing the Tremont Subdivision ("Tremont"), counts five through eight pertain to the treatment plant serving the Storeyland Mobile Home Park East ("Storeyland East"), and counts nine through twelve

deal with the plant serving Storeyland Mobile Home Park West ("Storeyland West"). The Tremont plant is located in Godfrey, Madison County, Illinois and the two Storeyland facilities are both situated near Alton, Madison County, Illinois. Similar violations are alleged to have occurred at each of the three sewage facilities during the period of early 1976 through April 14, 1980.

The Agency alleges that Storey has caused or allowed the following violations at each of the three facilities: (1) discharging effluent the color, odor, and turbidity of which is in excess of allowable limits, in violation of Section 12(a) of the Act and Rule 403 of Chapter 3 (Counts 1, 5, and 9) (2) releasing effluent exceeding by as much as five times the standard of 4 mg/l BOD₅ and/or 5 mg/l of suspended solids, in violation of Section 12(a) of the Act and Rules 404(f)* and 401(c) of Chapter 3 (Counts 2, 6, and 10), (3) discharging effluent in excess of five times the fecal coliform limit of 400 per ml., in violation of Section 12(a) of the Act and Rules 405 and 401(c) of Chapter 3 (Counts 3, 7, and 11), and (4) failing to submit discharge monitoring reports, in violation of Section 12(b) of the Act and Rules 501(a) of Chapter 3 (Counts 4, 8, and 12).

At the opening of the hearing, the parties stipulated certain facts concerning each of the three facilities (Comp. Ex.1-3, R. 12-22). Storey stipulated that each sewage treatment plant (STP) had been in operation since 1975, and that no Discharge Monitoring Reports (due on a quarterly basis) had been filed in 1976, 1977, 1978 or 1979 for any of the three plants. As to Tremont, Storey also stipulated to his status as a trustee, and that an Illinois Operating Permit (IOP) (1975-1979) had been issued to the trustees of Tremont Subdivision (Comp. Ex.1). As to Storeyland East, it was also stipulated that John Storey had operated the STP since 1975, and that John Storey had been issued first an IOP (1975-1977) and then an NPDES permit (1975-1982) for the STP (Comp. Ex.2).

As to Storeyland West, it was also stipulated that Storey had operated the STP since 1975, that he had been issued an IOP in 1975, and then an NPDES permit (1975-1979) for the STP (Comp. Ex.3).

In substantiation of its allegations concerning the quality of the effluent discharged, the Agency offers "Water Quality and Water Treatment Works Effluent Sampling Forms" and other memoranda filed by Agency personnel on various dates in 1976-1979, inclusive (Comp. Ex. 4, 7, and 10). The Agency's Group Exhibits 5, 8, and 11 consist of correspondence from 1972-1977 with Storey concerning poor conditions at each of the STPs, including letters referring to a compliance conference held on August 10, 1976. However, as the Agency's inspection reports and testimony show, little or no improvement in the operation, maintenance, or reporting of the plants resulted from the correspondence or the compliance conference.

*Rule 404(f) was not deleted from Chapter 3 until May 7, 1980.

Perhaps even more graphic evidence is the experiences of six residents served by the Tremont facility who testified at length about the sewage problems they have encountered. These problems included: odors from the sewage lagoon that were so intense people became nauseated and were driven into their homes or where they had to shut windows and doors (R. 176), basements covered with three-and-one-half inches of raw sewage (R. 191, 225), and sewage pouring out of the basement and into the backyard (R. 129).

Several of the Tremont residents sought relief through Mr. Storey but achieved little success. When they telephoned, they frequently received either a tape recorded message or no answer (R. 163); if they did get through, they were told that Mr. Storey had no money to fix the facility and that they were on their own (R. 207, 32). Since it became obvious that Storey was not going to alleviate their troubles, some residents installed sump pumps and summoned professional sewer services. One witness stated that she had to call such a service at least seven times, at a cost of \$25 to \$30 a visit (R. 127-136).

Mr. Storey made but one attempt to rebut the Agency's evidence concerning conditions of the three STPs. During the testimony of Mr. Robert Schleuger, Regional Manager for the Field Operation Section of the Agency, Mr. Schrimpf, Respondent's counsel, made an effort to discredit the Agency's method of testing by claiming that a single monthly sample is valid only for the exact time at which it is taken, and that there is no way to know the situation between samples (R. 100). If the Agency's assertions were based on one test, this argument might have some merit, but the violations appear in sample after sample over a period of years (Group Exhibits 4, 7, and 10). Based on all of the evidence submitted in this action, the Board finds that all violations as alleged in the Agency's complaint have occurred.

Storey does not challenge his liability for the operation of the Storeyland STPs. He does argue that he cannot be held liable for the Tremont violations, stating that he no longer has a legal or personal ownership interest in the Tremont Subdivision. The Board rejects this argument. Storey admits that he was a Tremont trustee until he resigned from that post in 1978 (R.38); many of the violations proved occurred before that date. Additionally, as the result of a later suit brought by Madison County Environmental Control, Storey was appointed receiver for the STP by the Madison County Circuit Court (R.37, 38. The record does not provide any further specifics of this action). As court appointed receiver-trustee, and signator of Tremont's NPDES permit, Storey continued to have a duty to operate the STP properly. The record shows that Storey makes all the decisions concerning what work is to be done at the Tremont facility (R.140, 236, 267), and he pays the salaries of the two or three people whose jobs are to look after the treatment plant (R.292, 321). The Board finds Respondent Storey liable for violations occurring at Tremont, and at both Storeyland facilities.

The bulk of Storey's evidence in this action goes to his alleged inability to pay the requisite and continuing costs of operation, maintenance, and personnel for each facility. The Board finds Storey's financial problems with the Storeyland facilities to have been within his power to alleviate. Storey claims that, due to low occupancy rates in the trailer parks, he is unable to generate sufficient income, stating that of the 265 spaces available at Storeyland West, only 150 to 200 have been occupied (R.56). However, Storeyland East is nearly fully occupied, with 125 out of 129 lots being utilized. Even if occupancy at both parks had been low, Storey could have either increased the rent for each space (which currently is a flat rent including all fees), or levied separate water use or tap on fees (R.356, 410-11).

The situation as to Tremont is significantly different. Ms. Sharon Cunningham, Storey's bookkeeper, testified that it requires \$600 a month to meet the ordinary expenses of Tremont plant, including minimal repairs. These expenses are to be met by the collection of monthly hook-up fees from residents, which have been and are currently \$4.00. However, at the time of the hearing only \$200 to \$300 were collected each month from residents, leaving a monthly operational deficit of \$300-\$400. In addition, the plant had unpaid bills totalling some \$8,000 for repairs (R.270-272, Gr. Ex. 5). These repairs were necessitated in large part by acts of vandalism to the system. These acts have been uncommonly destructive and deliberate. Rags and various other cloth objects have been introduced into the system and have clogged the pumps; objects such as trash cans, tires, and once a dead dog have been found in the lagoon; locks have been removed and fences cut; boards, bottles and cans have been found in sewer lines; and equipment such as aerators and chlorine tanks have been damaged (R.292-321, 329-335 Resp. Ex.1-4).

Storey's inability to collect sufficient fees in Tremont would seem, from this somewhat murky record, to be the result of Tremont's original organization plan as it concerns the treatment plant, hostility between and among Storey and the Tremont residents, and some inefficiency concerning billing on Storey's part. In the Tremont subdivision's plan of restrictions, it was provided that Storey as trustee would operate the Tremont STP until such time as 60% ownership was reached, whereupon the community was to nominate its own trustees. For various reasons, this never occurred (R.378-387). (As earlier mentioned, Storey was ordered to continue acting as trustee-receiver when he attempted to resign.) This plan of restrictions also included the \$4.00 monthly sewer assessment. The procedure which must be followed to raise the charge is not simple. On the one occasion (1974-1978) when Storey attempted to raise the fee to \$5.00, he was ordered to refund the additional \$1.00 due to a procedural defect (R.284-285).

Sewer charges are billed quarterly. There is evidence that several residents never received bills (Tr. 198-234). There is also evidence that some residents, after an unsuccessful attempt

to organize a protest against poor sewer operation by withholding fees, withheld payment from spring 1978 to spring 1979, but did not place the fees in escrow. Some residents have brought their accounts up to date, others have not (R.132-133, 155).

In order to collect unpaid fees, Storey originally employed the services of a collection agency. In 1978, after his appointment as receiver, he placed liens on approximately 130 homes for fees owed, in some cases for 10 years. Twenty of these liens have been satisfied. Court proceedings which were instituted concerning other liens have not been concluded (R.45, 270-272). In view of the totality of the circumstances, the Board feels that Storey's plea of financial problems concerning Tremont has some validity, although it is not entirely exculpatory.

Storey also pleads as a mitigating factor his attempt to have wastewater from all three plants treated elsewhere. In 1977, Storey petitioned the Godfrey Utility Board to accept the wastewater from the Tremont STP. The petition was rejected (R.49-50, 395).

Respondent also testified he paid "out of his personal pocket" \$20,000 to \$25,000 to construct sewer lines in the Storeyland trailer parks. This was done with a view to hooking up the parks with the Forest Homes-Cottage Hills sewage system operated by Wood River Township, and thereafter abandoning the Storeyville STPs (R.401-402). The Township Supervisor testified that the Township plant had ample capacity, and that the majority of the Town Board was in favor of the hook-on (R.243, 247-8). However, no further action has been taken towards making the hook-up due to litigation still pending at the time of hearing brought against Storey and the Town Board by a non-resident who objected to the hook-up arrangements (R.246, 250).

While the Board views these hook-up attempts to bring the plants into compliance as being in good faith, failure of these efforts are no excuse for either previous or continued non-compliance. Consideration of the facts and circumstances of this case pursuant to Section 33(c) of the Act leads the Board to conclude that this case is one in which imposition of a penalty is a necessary and appropriate aid to the enforcement of the Act. The degree of interference with the public welfare is great and the violations were continuing, while the economic arguments, except as to Tremont, were not compelling. As operator of each of the three treatment plants, it was and remains Respondent Storey's responsibility to assess and collect sewer use fees sufficient to enable each plant to be operated and maintained in compliance with the Act and Chapter 3.

The Board hereby assesses a penalty of \$1,000 for the violations occurring at Storeyland East, and \$1,000 for those occurring at Storeyland West. As to Tremont, in light of the noted financial, legal and other difficulties, the Board assesses a nominal penalty of \$300. (As Rule 404(f) is not currently in effect, the violations of that rule have not figured in the Board's determination of these penalties.)

Respondent John J. Storey will also be ordered to cease and desist from further violations, and to develop a plan to bring each STP into compliance.

This Opinion constitutes the Board's findings of fact and conclusions of law in this matter.

ORDER

1. Respondent John J. Storey is hereby found to have violated Sections 12(a) and 12(b) of the Environmental Protection Act and Rules 401(c), 403, 404(f), 405, and 501(a) of Chapter 3: Water Pollution.

2. Respondent Storeyland Homes, Inc. and Respondents John J. Storey, Rosemary Waltrip Storey and Donald Broadway, as Trustees of Tremont Subdivision, are hereby dismissed.

3. The Respondent is hereby ordered to cease and desist from violating the aforementioned Rules and Act.

4. Within 30 days of this Order, Respondent Storey will meet with the Agency to formulate a compliance plan for the sewage treatment plants serving the Tremont Subdivision, and Storeyland Mobile Home Parks East and West.

5. Within 90 days of the date of this Order, the Respondent shall pay, by certified check or money order payable to the State of Illinois, a penalty of \$2,300 which is to be sent to: Illinois Environmental Protection Agency, Fiscal Services Division, 2200 Churchill Road, Springfield, IL 62706.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order were adopted on the 18th day of September, 1980 by a vote of 5-0.



Christan L. Moffett, Clerk
Pollution Control Board