

ILLINOIS POLLUTION CONTROL BOARD
June 22, 1979

ENVIRONMENTAL PROTECTION AGENCY,)
)
 Complainant,)
)
 v.) PCB 78-110
)
 VILLAGE OF FARINA, a municipal)
 corporation, and BROWN PRODUCE)
 COMPANY, an Illinois corporation,)
)
 Respondents.)

Mr. Reed Neuman, Assistant Attorney General, appeared on behalf of Complainant;
Mr. Jack Johnston, Attorney at Law, appeared on behalf of the Village of Farina;
Mr. Oliver Brown appeared on behalf of Brown Produce Company.

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

This matter comes before the Board on a Complaint filed by the Environmental Protection Agency on April 20, 1978, against Respondents, Village of Farina (Village) and Brown Produce Company (Company), for constructing and operating a pretreatment works since October, 1976 without the necessary permits in violation of Section 12(b) of the Environmental Protection Act and Rules 951(c) and 953(a) of Chapter 3: Water Pollution Regulations.

A hearing was held on July 13, 1978, at which time the Complainant and the Respondents presented their testimony on this matter. At the conclusion of evidence, the Complainant moved to amend the Complaint by interlineation to conform with the proof adduced at the hearing. The Amended Complaint changed the allegations against the Village and the Company from constructing and operating a pretreatment works to construction and operation of a treatment facility in violation of Section 12(b) of the Act and Rules 951(a) and 952(a) of Chapter 3.

Procedural Rule 326 allows the Complainant to amend its Complaint to conform to the proof in the matter so long as, "no undue surprise results which cannot be remedied by a continuance." While the Village objected to changes being made in this manner, the Hearing Officer properly provided the

Counsel for the Village with an opportunity to make a motion to continue this matter for further hearings. In reply, the Village submitted a letter dated July 18, 1978, to the Hearing Officer which reiterated its objection to Complainant's amendment by interlineation and noted an error in the Hearing Officer's statement, dated July 14, 1978. However, the Respondent's letter did not allege surprise as a result of these changes, nor did it respond to the Hearing Officer's provision for further hearings. Since no prejudice or surprise was alleged, the Board will hereby accept Complainant's motion to amend the Complaint. (R. 194-206.)

At the beginning of the hearing on July 13, 1978, Complainant raised the issue that neither Respondent replied to Complainant's Request to Admit Facts and Genuineness of Documents within 20 days as required by Procedural Rule 314(c). Complainant's Exhibits #3 and #4 (return receipts) indicate that the Village and the Company received the pleadings in question on May 23, 1978. After reviewing the requests individually, the Board will delete Request for Admission, Numbers 3 through 9 in Complainant's Exhibit #1 to the Respondent Company, and Request for Admission, Numbers 2 through 9 in Complainant's Exhibit #2 to the Respondent Village since these requests refer or relate to pretreatment works subject matter which is inconsistent with the allegations of the Amended Complaint. For purposes of this proceeding, Request Numbers 1, 2 and 10 in Exhibit #1 and Request Numbers 1, 11 and 12 in Exhibit #2 as received by the Company and the Village respectively will be deemed admitted. (R. 16-25.)

The subject of this Amended Complaint concerns a sewage treatment facility owned and operated by the Village of Farina and more particularly, a lagoon. The new lagoon was constructed near the Village STP by the Brown Produce Company on or before September, 1976, and was conveyed to the Village of Farina on or before April, 1977. The sewage treatment plant consists of two primary cells, one receiving wastewater from the Company and the other receiving wastewater from the Village. Outflow from the primary cells flow into a second and into a third treatment cell before it is discharged to an unnamed tributary of the East Fork of the Kaskaskia River. (R. 31-33, 35-36; Exh. #7.)

The new lagoon was originally constructed on the Company's property to hold water for its egg processing plant. The record discloses no connection between the new lagoon and the Village STP or any discharge to the waters of the State. Furthermore, the lagoon supports no mechanical aeration equipment. According to Don Williams, a consulting engineer for the Village, the lagoon was designed to receive strong disinfectants and other effluents from the Brown Produce Company

which would disrupt the treatment processes in the primary cell receiving the Company's wastewater. (R. 35-36, 62, 69-71, 85-86, 113-14, 131-32.)

On October 7, 1976, Joseph Mahlandt, a field inspector for the Agency's Collinsville Regional Office, visited the Village sewage treatment plant and discovered a discharge from the Company into the new lagoon at a rate of 10 gallons per minute. Samples of raw water from the Company were determined to contain BOD₅ concentrations of 7,600 mg/l and total suspended solids concentrations of 2,100 mg/l while contents of the lagoon were described as milky-yellowish in color. On October 14, 1976, Mr. Mahlandt informed Mr. Brown and others that construction and operation permits were needed for the new lagoon. (R. 38-40, 44-45, 60, 189.)

Oliver Brown claimed that the lagoon was not constructed for the purposes of receiving wastewater from the Company plant, but occurrence witnesses testified that sewage was occasionally discharged to the lagoon from the Company. On return visit in July, 1978, Joseph Mahlandt found the lagoon to be a deep green color with a whitish scum on the surface. (R. 60, 90, 113-14.)

While there is much testimony in the record on whether the new lagoon is a pretreatment or treatment works or a holding pond, the evidence is clear that the construction and operation of this lagoon was not authorized by any permit issued by the Agency and therefore in violation of the Act and Board rules as alleged in the Amended Complaint.

The Board hereby finds the Brown Produce Company in violation of Section 12(b) of the Act and Rules 951(a) and 952(a) of Chapter 3 for causing or allowing the construction and operation of this lagoon without the necessary permits. The evidence in this record is also sufficient to find the Village of Farina in violation of Section 12(b) of the Act and Rule 952(a) of Chapter 3. Ownership of this lagoon without an operating permit constitutes a violation of the Act and Board regulations notwithstanding the Village's lack of control, care or maintenance over the lagoon.

In mitigation, the Village has presented testimony that it is currently seeking funding to upgrade and improve its treatment facility under the construction grants program. At the present time, the Village has received approval from the South Central Illinois Regional Planning and Development Commission and has been granted Step I facilities planning funding by the Agency. Prior to this action, the Village had sought a permit for this new lagoon which was denied by the Agency on May 23, 1977. (R. 114, 161.)

In considering Section 33(c) factors of the Act, the Board finds that any construction or modification of a sewage treatment plant without the necessary permits is of questionable value for controlling pollution or for improving or upgrading the facility. There is no doubt that compliance with the permit requirements before construction of the lagoon was technically practicable and economically reasonable.

Since notice of the violation, the Village has acted in good faith to bring the treatment facility under its ownership into compliance with the provisions of the Act and Board regulations. At the present time, the Village anticipates including the lagoon in its facilities plan to determine whether the lagoon should be incorporated into its existing facilities or abandoned and sealed off permanently.

In accordance with Section 42(a) of the Act, the Board will assess a penalty of \$400.00 against the Brown Produce Company for violations found herein as necessary to the enforcement of the Act. No penalty will be assessed against the Village of Farina as present owner of the unpermitted lagoon. The Village shall be ordered to cease and desist any future use and operation of this lagoon until permits are obtained to operate the lagoon as a modification to the treatment facility or until the lagoon is properly incorporated by permit into the upgraded treatment plant under the construction grants program.

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

ORDER

1. Respondent, Village of Farina, is found to have caused or allowed the operation of a treatment works modification without an operating permit in violation of Section 12(b) of the Environmental Protection Act and Rule 952(a) of Chapter 3: Water Pollution Regulations. The charge against the Village of Farina alleging violation of Rule 951(a) of Chapter 3 is hereby dismissed.

2. Respondent, Brown Produce Company, is found to have caused or allowed the construction and operation of a treatment works modification without a construction or operating permit in violation of Section 12(b) of the Environmental Protection Act and Rules 951(a) and 952(a) of Chapter 3: Water Pollution Regulations. Respondent, Brown Produce Company, shall be assessed a penalty of \$400.00 for violations found herein. Penalty payment by certified check or money order payable to the State of Illinois shall be made within 35 days of the date of this order to:


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

3. Respondents, Village of Farina and Brown Produce Company, shall cease and desist from violations of the Act and Board regulations as found herein as of the date of this order.

4. Respondent, Village of Farina, shall close and seal off the new lagoon from further use or operation until the Village obtains the necessary permits from the Environmental Protection Agency.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 22nd day of June, 1979, by a vote of 5-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board