

ILLINOIS POLLUTION CONTROL BOARD

March 13, 1975

ENVIRONMENTAL PROTECTION AGENCY,)
Complainant,)
)
v.) PCB 74-261
)
ESSANESS THEATRES CORPORATION,)
a Delaware corporation,)
Respondent,)

and

ENVIRONMENTAL PROTECTION AGENCY,)
Complainant,)
)
v.) PCB 74-346
)
RIVERDALE DRIVE-IN, INC.,)
an Illinois corporation,) (CONSOLIDATED)
Respondent.)

Mr. Jeffrey S. Herden, attorney for Complainant.
Mr. Jules G. Cogan, attorney for Respondents.

OPINION AND ORDER OF THE BOARD (by Dr. Odell)

On July 9, 1974, the Environmental Protection Agency (Agency) filed a Complaint with the Pollution Control Board (Board) against Essaness Theatres Corporation. The Complaint alleged that since July 1, 1974, Respondent had operated a treatment works at its drive-in theatre without an Operating Permit in violation of Rules 903(a) and 903(c)(3) of the Water Pollution Regulations (Chapter Three) and Section 12(b) of the Environmental Protection Act (Act). At the hearing on September 3, 1974, Essaness Theatres Corporation moved that the Complaint be dismissed because the theatre is owned and operated by Riverdale Drive-In, not the parent corporation, Essaness. The Board denied this motion on October 10, 1974. The Agency filed another Complaint, PCB 74-346, on September 23, 1974, against Riverdale Drive-In alleging that it operated its treatment works without an Operating Permit from the Agency. The facility is located proximate to the intersection of Interstate Route 80, Illinois Route 43, and Oak Park Avenue in an unincorporated area south of Tinley Park, Cook County, Illinois. These alleged violations of Rules 903(a) and 903(c)(3) of Chapter Three and Section 12(b) of the Act occurred from July 1, 1974, until September 23, 1974. On October 31, 1974, the Board consolidated these two proceedings.

A Stipulation and Proposal For Settlement (Stipulation) was submitted to the Board on February 21, 1975, after the parties waived their right to a hearing. For purposes of settlement only, Riverdale Drive-In, the operator of the theatre, admitted that it did not have a permit on July 1, 1974. After it received notice of the violation, Riverdale made good faith efforts to get a permit. The Agency issued the permit on October 10, 1974. The parties agreed in the Stipulation that Essaness was not liable for any violation of the Act or the Regulations. The Stipulation stated that the Agency was unaware of any pollution problem at the facility. Riverdale agreed to pay a civil penalty of \$125.00 for its permit violation.

We accept the Stipulation and Proposal For Settlement entered into among the parties. While it is against Board policy to approve settlements without the procedural protections of a hearing, we are confident that the narrow exception carved out in this case will not be repeated in the near future. The facts and circumstances of this case convince us that it would be unproductive to order this cause to be sent back for further hearing. The violation was short-lived, and good faith efforts were made to rectify the situation. No other environmental harm has been shown or alleged. The public interest has been sufficiently protected by the remedy agreed to by the parties in this case.

This Opinion constitutes the findings of fact and conclusions of law of the Board.

ORDER

IT IS THE ORDER of the Pollution Control Board that:

1. Riverdale Drive-In, Inc. shall pay a penalty of \$125.00 for its violations of Rules 903(a) and 903(c)(3) of the Water Pollution Regulations and Section 12(b) of the Environmental Protection Act, as established in this Opinion. Payment shall be by certified check or money order payable to the State of Illinois, Fiscal Services Division, Environmental Protection Agency, 2200 Churchill Road, Springfield, Illinois 62706. Payment shall be made within 35 days of the adoption of this Order.

2. The Complaint against Essaness Theatres Corporation is dismissed with prejudice.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 13th day of March, 1975, by a vote of 4 to 0.


Christan L. Moffett