

ILLINOIS POLLUTION CONTROL BOARD

November 14, 1974

ENVIRONMENTAL PROTECTION AGENCY,)
Complainant,)
v.)
PETEY'S II, INC.,) PCB 74-260
an Illinois corporation,)
Respondent.)

Mr. John S. O'Brien, attorney for Complainant.
Mr. Ollie E. Stone, attorney for Respondent.

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

On July 9, 1974, the Environmental Protection Agency (Agency) filed a Complaint against Peter Kattos. An Amended Complaint was filed with the Pollution Control Board (Board) on August 14, 1974, against Petey's II, Inc. and alleged that Respondent from July 1, 1974, until August 14, 1974, operated its restaurant at 159th Street and Route 45, south of Orland Park, Illinois, without an operating permit for its septic tank and seepage field system. Such activity allegedly violated Rule 903(a) and 903(b) of the Water Pollution Regulations (Chapter Three) and therefore was in violation of Section 12(b) of the Environmental Protection Act (Act).

A hearing was held in Orland Park, Illinois on October 9, 1974. Respondent admitted the violations set out in the Complaint (R. 3). The hearing testimony went to the issue of mitigation. The Respondent has been operating the restaurant since October, 1972 (R. 6). The evidence established that Respondent did not realize that he was in violation of the Act and Chapter Three until late July, 1974 (R. 29, 30). Notice of the alleged violations was delayed, because the first Complaint named the incorrect party as the Respondent. The Amended Complaint cured this defect. Once the Respondent became aware of the need for a permit, he made every effort to comply (R. 6, 7). Respondent experienced some delay in filing its permit application, because of confusion on the part of Respondent's agents concerning the processing procedure (R. 8). After these difficulties were overcome, a permit application was submitted on October 16, 1974, one week after the date of the hearing. On October 22, 1974, a copy of the permit issued to the Respondent by the Agency was filed with the Board.

We find that the Respondent has violated Section 12(b) of the Act and Rules 903(a) and 903(c)(3) of Chapter Three.

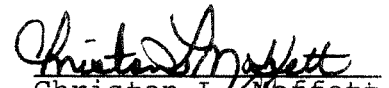
Respondent has shown good faith in its efforts to comply with the law once a violation was realized. While Respondent's behavior cannot be completely excused because the Act is malum prohibitum, the circumstances surrounding the permit violation require that only a nominal penalty be imposed. A technical permit violation occurred, but it was not argued that there was any physical pollution.

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

ORDER

IT IS THE ORDER of the Pollution Control Board that Respondent pay a penalty of \$50.00 for its violations of the Act and Regulations 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.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 14th day of November, 1974, by a vote of 5 to 0.


Christan L. Moffett