

ILLINOIS POLLUTION CONTROL BOARD  
December 20, 1990

HERMAN PRESCOTT, )  
 )  
 Complainant, )  
 )  
 v. ) PCB 90-187  
 ) (Enforcement)  
 THE CITY OF SYCAMORE, ILLINOIS, )  
 )  
 Respondent. )

ORDER OF THE BOARD (by J. C. Marlin):

This matter is before the Board on a Motion to Dismiss Petition as Frivolous filed by Respondent City of Sycamore ("Sycamore") on November 29, 1990. The Complainant, Herman W. Prescott ("Prescott") filed a response on December 19, 1990. Because of the result reached today, the Board will not specifically address the response. After consideration of the motion to dismiss, the Board denies it.

The motion raises several grounds as to why the complaint should be dismissed as frivolous. The first is that one of the sections claimed to be violated in this water enforcement case, Section 654.403 of the Illinois Environmental Protection Agency regulations, involves secondary maximum contaminant levels for finished water and is not an enforceable tolerance limit. We agree. Section 604.401(b) of Board regulations states that the Agency may set levels and promulgate procedures for chlorination. 35 Ill. Adm. Code 604.401(b). The Agency requires a minimum free chlorine residual of 0.2 mg/L or a minimum combined residual of 0.5 mg/L be maintained in all active parts of the distribution system at all times. 35 Ill. Adm. Code 653.604. The Board agrees, however, that the Complainant's reliance on Section 654.403 as an enforceable standard for residual chlorine is misplaced. Section 654.403 lists secondary maximum contaminant levels for finished water. It is neither an enforceable provision of the Illinois Environmental Protection Act nor an enforceable Board regulation. Therefore it is not the proper subject of an enforcement action. As Respondent admits, however, Prescott correctly cites the enforceable standard, 35 Ill. Adm. Code 654.403, in his complaint. We find therefore no need to dismiss the provisions of Prescott's complaint relating to residual chlorine just because Complainant includes an additional, non-enforceable standard.

Sycamore's second ground for dismissal of Prescott's allegations concerning residual chlorine is that the test results Prescott includes are "undocumented and unfounded." Sycamore contends its test results show compliance with the applicable standards. Sycamore attaches these test results as an exhibit.

As the above shows, the facts regarding the test results and the actual residual levels are controverted. The Board finds this to be an insufficient reason to find the complaint frivolous.

Sycamore raises a third reason as to why the complaint should be dismissed. Prescott's complaint alleges that the finished water has an odor and is frequently rusty. These allegations are deficient, Sycamore argues, because Prescott neither appends test results nor does Prescott cite a section of the Act which has been violated. Sycamore attaches to its motion tests results for manganese and iron concentrations which show that it is in compliance.

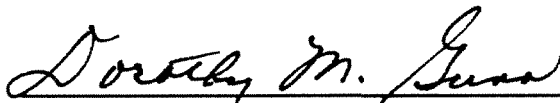
Sycamore is technically correct that the Complainant has not cited any applicable Board rule or section of the Act regarding manganese and iron concentrations which Sycamore is claimed to have violated. We are reluctant, however, to so narrowly construe Prescott's complaint as to require dismissal. Rather, we believe the claim is sufficiently stated so as to apprise Respondent of the conduct of which Prescott complains. Complainant may amend the Complaint to add those sections claimed violated in a supplemental pleading or amend his pleadings to conform to the proof at hearing. See 35 Ill. Adm. Code 103.210. As regards Sycamore's test results, the facts are again controverted. Therefore, the motion to dismiss these allegations is denied for reasons similar to those given previously.

Lastly, Sycamore requests the complaint be dismissed as frivolous because the Complainant improperly attempts to enforce the written recommendations of the Illinois Environmental Protection Agency contained in a letter dated July 20, 1990 to the city. We agree with Respondent that these recommendations are not a proper basis for an enforcement action. As we read the complaint however, Prescott asks the city to conform to these recommendations as the relief Complainant is requesting not as an actionable violation itself. Therefore, the motion to dismiss on this ground is also denied.

Respondent's motion to dismiss is hereby denied. The matter is accepted for hearing.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 20<sup>th</sup> day of December, 1990 by a vote of 7-0.

  
Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board