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***In re* Clinton Water Works Rate Schedule Adopted Sept. 9, 1997, 707 N.E.2d 807 (Ind. Ct. App. 1999)** (holding that after the city's removal from the jurisdiction of the IURC, it could raise rates to generate revenue for repairs and that the rate increase was just, reasonable, and nondiscriminatory).

On September 9, 1997, the Common Council of the City of Clinton ("City") adopted an ordinance setting forth an increase in the City's water rates. These increases resulted in the Clinton Township Water Co., Inc. ("Township") paying the same rates as the residential customers. The Township filed a petition objecting to the rate increase, claiming it violated IC 8-1.5-3-8. The trial court held a hearing on the Township's petition and confirmed the City's rate increase. The Township appealed the trial court's decision.

The first issue was whether the City was required to justify the rate increase by using the same rate–making methods and procedures followed by utilities subject to the jurisdiction of the Indiana Utility Regulatory Commission ("IURC"), for approval of rates and charges. The Township also argued that the City was not permitted to raise rates to cover future expenses. The City previously removed itself from jurisdiction of the IURC. Therefore, the court held that a municipal utility that removed itself from that jurisdiction is not limited to the methodologies used by the IURC and could raise rates to generate revenue for repairs. The court held, however, that IC 8-1.5-3-8 still required the municipal utility to make rates that are nondiscriminatory, reasonable, and just.

The second issue, therefore, was whether the municipal utility's rate increase was nondiscriminatory, reasonable, and just. The court held that the evidence demonstrated that the rate increase met each of those characteristics. In addition, IC 8-1.5-3-8(a) requires the City to provide its customers with reasonably adequate services and facilities. The court held that the City presented evidence to the trial court establishing that the rate increases were necessary to provide adequate services. The court, therefore, affirmed the trial court's findings and approved the rate increases.

Lori Asher

IOWA

Iowa v. DeCoster, 596 N.W.2d 898 (Iowa 1999) (holding an owner of an Iowa hog confinement facility strictly liable for violating statutes and regulations governing spray irrigation and for violating freeboard standards).

Austin J. DeCoster owned more than thirty hog confinement facilities. The Department of Natural Resources ("DNR") issued

permits for the construction of two earthen waste storage basins in units two and three, and unit nine's anaerobic lagoon. On April 27, 1995, DeCoster began spray irrigating manure from the waste storage basin at unit three. During the second spray irrigating application, an employee discovered that water and manure started to pool in the low spots. Irrigation continued until the next day. A local noticed a dirty darkish color with a strong odor of manure running from both tile outlets. The outfalls created foam in the water in the ditch and continued until someone removed the tile. The two tile outlets discharged into a stream that eventually joined the Iowa River. A DNR field agent investigated and concluded that DeCoster's spray irrigation penetrated three feet of soil, reaching the tile line creating the polluted discharge.

The trial court held that the overwhelming evidence showed that the spray irrigation caused the polluted discharge from the tile outlets. It imposed a civil fine of $59,000 against DeCoster, which he appealed. This court then affirmed in four parts.

First, the court agreed with the lower court that sufficient evidence existed to show that the polluted discharge and putrid odor of hog manure came from DeCoster's spray irrigation.

Second, the court pointed out Iowa Code § 455B.186(1), which states that an operator is in violation of this section if it places pollutants into the state's water. The pollutants found in the water came from the tile outlets at DeCoster's facility. DeCoster, through his employees, knowingly placed pollutants in state water by contaminating the soil around the water. Therefore, he was strictly liable for violation of the statute.

Third, the court held that DeCoster violated Iowa Administrative Code rule 567-65.2(7) which states that manure removal shall be done in a manner that will not cause surface or groundwater contamination. The evidence showed that the pooling and foam that emerged onto the surface directly resulted from the spray irrigation. DeCoster's process for manure removal led to surface and groundwater pollution; therefore, he was liable for violating the regulation. The court also pointed out that a permit from DNR did not a defense as it did not confer the right to violate state statutes and regulations.

Finally, the court affirmed the lower court's finding of a violation of the freeboard standards. The DNR permit issued to DeCoster limited the space between the top of the berm of the basin and the level of waste to two feet. DeCoster exceeded that limit and violated the regulation. DeCoster argued that the violation did not cause the pollution, but the removal of tile line caused it. The court held that DeCoster did not remove the waste properly; therefore, the tile outlets clogged and caused the discharge.

The court also reviewed the imposition of the civil fine. It found that the lower court had not abused its power to impose fines and that the appropriate fine for DeCoster was $59,000.

Lastly, the court addressed DeCoster's claim that the penalties

imposed by the lower court violated his equal protection rights because his fines were greater than those imposed on previous violators. The court rejected that claim because the evidence failed to show DeCoster received unequal treatment. The court found that DeCoster violated the Iowa statutes and regulations. The trial court correctly found him strictly liable and imposed an appropriate fine.

Sheela S. Parameswar

KANSAS

Moon v. City of Lawrence, 982 P.2d 388 (Kan. 1999) (holding that the homeowners' claims for personal and real property damage recovery against the City, resulting from the storm water drainage system flood, were barred by the statute of limitations).

Homeowners resided in a part of Lawrence, Kansas, which had a history of water drainage problems. In 1958, the City of Lawrence ("City") constructed a complex drainage system. However, within a few years, the City became aware of the inadequacy of the drainage system. Heavy rains rendered a portion of the drainage system inadequate because the inlet pipe could not accommodate the large amounts of water runoff. In the late 1960's, the City hired Black & Veatch Consulting Engineers ("B & V") to examine different drainage systems and identify solutions to those systems' problems. B & V recognized the systems, including the Second and Michigan Street Drainage System at issue here, as inadequate and suggested three modes of action. The City executed only two of B & V's recommendations. The recommendation that the City did not perform constituted most of the financial burden. Since the implementation of B & V's two recommendations, the City had on occasion inspected, maintained, and repaired the Second and Michigan Street Drainage System.

Since 1969, an abundance of development occurred upstream from the homeowners' properties. Development included the erection of the Holidome, the Sallie Mae Office Building with two accompanying parking lots, and the Highpointe Apartments. The City allowed each of these three sites to be completed with the knowledge that each project did not require a storm water detention system because of their nearness to the Second and Michigan Street Drainage System.

The homeowners suffered substantial damage due to the flooding. The homeowners alleged damages included: (1) severe yard flooding, sometimes resulting in damage to outdoor property; (2) numerous incidences of basement flooding, sometimes including property damage; and (3) garage flooding. Each of the homeowners had knowledge of the propensity of flooding between 1978 and 1993.