

ILLINOIS POLLUTION CONTROL BOARD

May 29, 1974

ENVIRONMENTAL PROTECTION AGENCY,)
Complainant,)
)
v.) PCB 73-50
)
CARUS CORPORATION, a Delaware)
corporation,)
Respondent.)

Mr. Fredric J. Entin, attorney for Complainant.
Mr. Eugene W. Beeler, Jr., attorney for Respondent.

INTERIM ORDER OF THE BOARD (by Dr. Odell)

The Environmental Protection Agency (Agency) filed a Complaint against the Carus Corporation (Carus) on February 12, 1973. An Amended Complaint was filed March 9, 1973, and a Second Amended Complaint was filed August 17, 1973. The Third Amended Complaint was filed September 14, 1973. In this Complaint, the Agency alleged that:

1. Respondent, from August 31, 1970, to September 14, 1973, discharged effluent into the Little Vermillion River from the South Lagoon of its facility in violation of Section 12(a) of the Environmental Protection Act (Act).
2. Respondent, from August 31, 1970, to March 7, 1972, operated its wastewater facilities in such a manner as not to remove color to below obvious levels from the effluent which discharged into the Little Vermillion Creek in violation of Rule 1.08(10)(b)(3) of the Illinois Sanitary Water Board Rules and Regulations (SWB-14).
3. Respondent, from August 31, 1970, to March 7, 1972, operated its wastewater facilities in a manner producing odor in violation of Rule 1.03(c) of SWB-14.
4. Respondent, from March 7, 1972, to September 14, 1973, operated its wastewater facilities in a manner allowing effluent from the South Lagoon to contain visible oil and failed to provide for removal of color and turbidity to below obvious levels in violation of Rule 403 of Chapter 3: Water Pollution Regulations of Illinois (Chapter 3).

On March 28, 1974, a hearing took place in Ottawa, Illinois. The parties, for purposes of settlement only, submitted a Stipulation and Proposal for Settlement (Stipulation). In pertinent part, the Stipulation stated:

1. "Carus is presently engaged in the manufacture of industrial use chemicals, including CAIROX potassium permanganate, hydroquinone, and Mn28 manganese sulfate. Carus also produces, on a much smaller scale, several dry-mix chemicals of a proprietary nature. It employs 169 persons.

2. "All water from the barometric condensers, equipment cooling water, drinking fountain water, and water from the boiler feed water station is discharged directly to the South Lagoon which, in turn, is designed to prevent the discharge of insoluble manganese and suspended solids into the Little Vermillion River. The South Lagoon is approximately 650 feet by 300 feet, has a design capacity of 1,500 gallons per minute, and discharges at the rate of approximately 670 gallons per minute. The South Lagoon and its effluent are the subject of this Enforcement Action.

3. "Carus has undertaken various process and maintenance control improvements which were also expected to enhance the quality of the South Lagoon effluent, some of which were internally approved and begun prior to filing of this Enforcement Action by the Agency.

4. "The parties hereby stipulate and agree to the following special conditions which shall modify this proposal notwithstanding any of the above terms and conditions:

- (a) Upon completion of the process and maintenance control improvement projects, the parties anticipate that the South Lagoon effluent will be within applicable effluent standards effective as of the date of the Board's Order entered herein.
- (b) The parties will conduct an abbreviated hearing for the sole purpose of submitting testimony to further describe and clarify various technical aspects of the process and maintenance control improvement projects.
- (c) Carus agrees to remit \$900.00 to the State of Illinois within 35 days following the entry of the Order of the Board in this case.
- (d) Approval by the Board of this proposal shall constitute dismissal with prejudice of the Enforcement Action herein with regard to the South Lagoon.
- (e) Should the Board fail to approve all of the terms of this proposal, said proposal shall, at the election of either party, be held for naught and no admissions or allegations contained herein shall serve to prejudice any party in any subsequent hearing and decision of this case."

We are unable to accept the Stipulation for the following

reasons. First, the Special Conditions, indicated as 4(c) and 4(d) above, represent mutually exclusive remedies. Payment of a \$900.00 penalty is predicated on violation of the Act or regulations; dismissal implies that no violation has occurred.

Second, Respondent did not admit any violation of the Act and Rules (R-3) and the evidence (Exhibit No. 3) regarding alleged infractions is weak. Since the installation of all pollution control equipment in January of this year, the American Public Health Association's measurements of color (APHA color) indicate possible violation of Rule 1.08(10)(b)(3) of SWB-14 and Rule 403 of Chapter 3 on January 17 and January 31, 1974. Evidence for violations of odor turbidity and visible oil was not made part of the Stipulation.

Third, Respondent stated, as part of the Stipulation, that by the time of the Board's adoption of this Order, Respondent would be in compliance with all the effluent limitations of Chapter 3 [See 4(a) above]. The data submitted by Respondent does not give us sufficient assurance that such compliance has been achieved. Grab sample data (Exhibit No. 3) indicate the level of BOD₅ to be above 4 mg/l on three occasions since January 1, 1974. Lacking information regarding the dilution ratio of the effluent we are unsure which standard under Rule 404 of Chapter 3 (e. g. 4 mg/l of BOD₅ or 10 mg/l BOD₅) is applicable.

We remand this cause to the Hearing Officer for further proceedings. Within 120 days of this Interim Order, either additional hearings should be held or a new Stipulation should be entered to clarify the ambiguity on which the Board's first objection is based and to supply additional relevant information as a basis for resolving questions raised by the Board's second and third objections.

IT IS SO ORDERED

Mr. Marder abstained.

I, Christian L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 29th day of May, 1974, by a vote of 4 to 0.


Christian L. Moffett, Clerk