ILLINOIS POLLUTION CONTROL BOARD
May 15, 1980

ENVIRONMENTAL PROTECTION AGENCY,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB 79-44
	)	
CITY OF MOUNT CARMEL	)	
	)	
Respondent.	)	

MR. REED W. NEUMAN, ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF THE COMPLAINANT.

MR. ROBERT M. KEENAN, JR., OF TOWNSEND, TOWNSEND & KEENAN APPEARED ON BEHALF OF THE RESPONDENT.

OPINION AND ORDER OF THE BOARD (By J. Anderson):

This matter comes before the Board upon the March 2, 1979, Complaint brought by the Illinois Environmental Protection Agency ("Agency"). The Respondent, the City of Mount Carmel ("City), is an Illinois municipal corporation which owns and operates a wastewater treatment facility located in Wabash County. The wastewater treatment plant discharges contaminants into the Wabash River pursuant to its NPDES permit.

The Complaint charges the City with two types of offenses: violation of effluent standards and violation of monitoring and reporting requirements.

Count I of the complaint alleged that in the months of October, 1977, through April, 1978, inclusive the Respondent allowed the discharge from its wastewater treatment facility of effluents containing suspended solids in excess of the limitations contained in its NPDES Permit in violation of Rule 410(a) of Chapter 3: Water Pollution Control Regulations ("Chapter 3"), and Section 12(f) of the Illinois Environmental Protection Act ("Act").

Count II alleged that in the months of October, 1977, through March, 1978, the Respondent allowed the discharge of effluents exceeding the maximum chlorine residual concentration limits contained in its NPDES Permit in violation of Rule 410(a) of Chapter 3 and Section 12(f) of the Act.

Counts III, IV, and V alleged that, in violation of NPDES permit requirements Respondent failed to monitor its effluent for and to report concerning, respectively a) data relevant to fecal coliform for each of the months of April through August, 1978, inclusive, b) "quantity" measurements relevant to BOD_5 and Total Suspended Solids for each of the months of November, 1977, through September, 1978, inclusive, and c) the levels of specified metals and other parameters for each of the semiannual reporting periods occurring between June 30, 1977, to the date of the complaint, thereby violating Rule 901 of Chapter 3 and Section 12(f) of the Act. A hearing was held on September 27, 1979. At that time the parties verbally presented a series of stipulated facts and proposed a partial agreed settlement for Board approval.*

The City and the Agency submitted as Joint Exhibit #1 the discharge monitoring reports filed by the City with the Agency from October of 1977 through July of 1979 (R. 18). The parties admitted and agreed that these monthly reports demonstrate the validity of all Agency allegations with one exception: The Count II complaint concerning violation of residual chlorine standards in January, February, and March of 1978. The parties joined in a request that these allegations be dropped (R. 8-10, 12).

Both the Agency and the City, by their attorneys, offered stipulated facts in explanation for and mitigation of the City's offenses.

The Count II residual chlorine violation during October, November and December of 1977 involved the discharge of roughly twice the permitted concentration (Ex. 1, p. 1-3). This was described as the result of the failure to function of an automatic metering system, which required the operator to learn to assume manual control (R. 13, 14). (No explanation was given for the Count I suspended solids violation wherein the discharge levels for this parameter were from one and one-half to three times in excess of permitted levels between October, 1977, and April, 1978, Ex. p. 1-8.)

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*These verbal stipulations have not been reduced to the written statement comtemplated by Board Procedural Rule 331 "Settlement Procedures." The factual stipulations are in large part based on documents introduced as evidence at the hearing, and the agreed compliance program is modest enough to have been fully explained in the hearing record. Consequently, the Board waives the procedural irregularity in the interests of expeditious adjudication. E.P.A. v. Johnson, Johnson and Salvage, PCB 74-471, 25 PCB 347, 438 (April 28, 1977).

The Count III fecal coliform reporting failure of April through August, 1978, was explained as the result of non-operation of temperature control equipment necessary to establish appropriate test conditions (R. 14). The Count V semiannual specified metals and other paramaters testing failure during the period July, 1977, through March, 1979, was attributed to the existence of a dispute between the City and the contractor who had constructed and provided equipment for the treatment plant. The resulting lawsuit caused the Federal Environmental Protection Agency to withhold $120,000 from the construction grant, rendering the City unable to purchase the required testing equipment. The City further submitted however that it had contracted to have regular tests made by a testing firm beginning in March, 1979 (R. 15-16).

Finally, the Count IV failure to supply BOD_5 and suspended solids quantity measurements for the months October, 1977, through September, 1978, was testified to be the result of misunderstandings of Agency requirements by the treatment plant operator and preparer of the monthly discharge reports. The parties stipulated that the operator had, on his own initiative, contacted the Agency for assistance in reporting, and that following the October, 1978, visit of an Agency representative the reports had markedly improved (R. 11, 15).

In evaluating this action and settlement proposal, the Board has taken into consideration the facts and circumstances in relation to the criteria of Section 33(c) of the Act, and Board Procedural Rule 331. Based on the hearing record and exhibits, the Board finds that the Respondent, City of Mount Carmel, has violated Rules 410(a) and 901 of Chapter 3: Water Pollution Control Regulations and Section 12(f) of the Act. The Board hereby adopts the settlement proposed by the parties which includes entry of a cease and desist order and subjection of the City to a compliance program ordering the current operator of the Mt. Carmel treatment plant to consult with a designated member of the Agency's technical staff concerning reporting requirements and obligations (R. 20, 21).

The parties could not agree to a stipulated penalty, and did not suggest specific penalty sums, although both agreed the penalty should be small. The Board appreciates that steps toward reporting compliance were taken before the filing of the Agency's complaint. But, while the City may not have economically benefitted from its failure to comply with the conditions of its permit (R. 22), it was less than prompt in seeking means for correcting its metals and other parameters testing and suspended solids discharge problems even if litigation by the contractor complicated startup problems. Thus, the Board hereby assesses a penalty of $200 in aid of enforcement of the Act. Respondent's suggestion of penalty suspension is rejected.

This Opinion constitutes the Board's findings of fact and conclusions of law in this matter.

ORDER

It is the Order of the Illinois Pollution Control Board that:

1) The allegations of Count II relating to the reporting months of January, February, and March of 1978 are hereby dismissed.

2) The Respondent, City of Mount Carmel is hereby found to have violated Rules 410(a) and 901 of Chapter 3: Water Pollution Regulations and Section 12(f) of the Environmental Protection Act.

3) The Respondent shall cease and desist from further violations.

4) Within 45 days of the date of this Order, the Respondent shall cause its current treatment plant operator to meet with an appropriate member of the technical staff of the Illinois Environmental Protection Agency concerning reporting requirements and obligations.

5) Within 45 days of the date of this Order, the Respondent shall, by certified check or money order payable to the State of Illinois, pay a penalty of $200 which is to be sent to:

Illinois Environmental Protection Agency
Fiscal Services Division
2200 Churchill Road
Springfield, Illinois 62706

Mr. Dumelle concurred.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order were adopted on the 15th day of May, 1980 by a vote of 5-0.

Christan L. Moffett

Christan L. Moffett, Clerk
Illinois Pollution Control Board