ILLINOIS POLLUTION CONTROL BOARD October 14, 1971

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CITIZENS UTILITIES CO. OF ILLINOIS

v.

71-125

ENVIRONMENTAL PROTECTION AGENCY

Supplemental Opinion and Order of the Board (by Mr. Currie):

On August 13, 1971, we entered an order authorizing the bypassing of a sewage treatment lagoon during its repair, since its effluent was worse than its influent, on certain conditions. Citizens has sought judicial review of the conditions relating to money penalties, additional waste connections, and a stormwater control program. As required by Supreme Court Rule 335, Citizens filed with us a motion for stay of those portions of our order pending review.

As in Spartan Printing Co. v. EPA, # 71-19, decided today, we think a stay as to the money penalty is appropriate, since it makes no difference to the State whether the money is received before or after judicial review. But to delay the ban on new connections to an inadequate plant, or to delay commencement of a stormwater control program, would cause the very harm the order was intended to prevent, and we will deny it.

The company also asks that we delay the date for repairing the lagoon until six weeks after we pass on the present motion. The theory seems to be that unless Citizens complies with the contested provisions of the order it does not have permission to repair its lagoon. The fact appears to be that repair has been distressingly delayed despite our plain statement that the present operation is in violation of law and that repair--with bypassing-should have been undertaken some time ago without even seeking a variance. There is no excuse for the present delay, and the company has left itself open to prosecution for further penalties. Once again we shall order that the repair be completed as quickly as possible.

In sum, the motion is granted insofar as it seeks a stay of the money penalty pending review, on condition that a bond to secure payment of the penalty in the event of an adverse judicial decision is filed with the Environmental Protection Agency within 15 days after receipt of this order. In all other respects the motion is denied. I, Regina E. Ryan, Clerk of the Pollution Control Board, certify that the Board adopted the above Supplemental Opinion of the Board this 14 day of October , 1971.

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