

ILLINOIS POLLUTION CONTROL BOARD
January 22, 1987

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) PCB 86-32
)
CITY OF SYCAMORE,)
a municipal corporation,)
)
Respondent.)

OPINION AND ORDER OF THE BOARD (by R. C. Flegal):

This matter comes before the Board upon a settlement stipulation ("stipulation") filed by the Illinois Environmental Protection Agency ("Agency") and the City of Sycamore ("Sycamore") at hearing held in this case on December 18, 1986. Two exhibits were also introduced at hearing as part of the stipulation. No other exhibits or testimony, were presented at hearing.

This proceeding was initiated by the filing of a six-count complaint by the Agency on March 5, 1986. The Agency subsequently filed a First Amended Complaint on June 27, 1986. The First Amended Complaint alleges violations of Sections 12(a) and 12(b) of the Act, as well as violations of Sections 306.102, 306.303, 306.304, 306.305, 309.202, 309.203, 312.101, 380.401, and 330.501 of the water pollution regulations. These alleged violations are said by the Agency to have occurred as a result of the installation and use of a bypass from Sycamore's north wastewater treatment plant to the Kishwaukee River. The bypass, which the stipulation states was installed on June 8, 1983, was used to relieve flooding and basement backups within Sycamore.

The stipulation contains assertions that are non-binding and binding in nature. Included among the former are statements that there are problems with Sycamore's system that must be remedied to prevent future bypassing violations after proper engineering and investigation; that Sycamore has commissioned an engineering study in order to provide remedies; and that future plans for compliance and additional control measures include retention of the firm of Greeley and Hansen to perform a study of the possible causes of the problems of the system and the remedies available.

The binding language found in the stipulation commits Sycamore to, inter alia, comply with the Act and the Board's water pollution regulations; abide by all terms and conditions of

all permits issued to it by the Agency; take "all reasonable and practical measures to eliminate any and all problems with its sewer system", and to do so within a "reasonable" length of time following completion of the aforementioned engineering study and pay a penalty of \$9,000.00 into the Environmental Protection Trust Fund.

In evaluating this enforcement action and proposed settlement agreement, the Board has taken into consideration all the facts and circumstances in light of the specific criteria delineated in Section 33(c) of the Act and finds the settlement agreement acceptable under 35 Ill. Adm. Code 103.180. Moreover, the Board finds the stipulated penalty to be necessary to aid in the enforcement of the Act. Accordingly, the Board will order Sycamore to pay the stipulated penalty of \$9,000.00 into the Environmental Protection Trust Fund and comply with the other provisions of the stipulation, as agreed-upon by the parties.

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. Respondent has violated Sections 12(a) and (b) of the Environmental Protection Act, and has operated its plant without a Class I operator.
2. Within 45 days from the date of this Order, the City of Sycamore shall, by certified check or money order payable to the State of Illinois and designated for deposit into the Environmental Protection Trust Fund, pay the stipulated penalty of \$9,000.00 to:

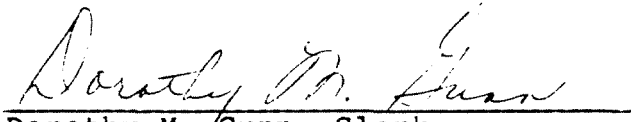
Illinois Environmental Protection Agency
Fiscal Services Division
2200 Churchill Road
Springfield, Illinois 62706

3. The City of Sycamore shall comply with all the terms and conditions of the Stipulation and Proposal for Settlement filed on December 18, 1986, which is attached and incorporated by reference as if fully set forth herein.

IT IS SO ORDERED.

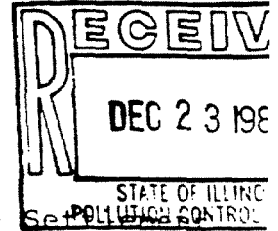
Board Member J. Theodore Meyer dissented.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 22nd day of January, 1987, by a vote of 5-1.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board

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SETTLEMENT STIPULATION

This stipulation is entered into pursuant to the Settlement Procedures of the Rules and Regulations of the Illinois Pollution Control Board by Carey Cosentino, on behalf of Neil Hartigan, Attorney General for the Illinois Environmental Protection Agency (Agency), and Charles L. Fierz, authorized representative and City Attorney for the City of Sycamore (City).

WHEREAS, the nature of and reasons for this settlement are to impose sanctions on City for past violations as set forth herein, to deter same in the future, and to acknowledge the necessity of same without future remedial action, and the purpose is to promote cooperation between Agency and City in order to minimize water pollution; and

WHEREAS, the parties agree that the statement of facts contained herein represents a fair summary of the evidence and testimony which would be introduced by the parties if a full hearing were held. The parties further stipulate that this statement of facts is made and agreed upon for purposes of settlement only and that neither the fact that a party has entered into this stipulation, nor any of the facts stipulated herein, shall be introduced into evidence in this or any other proceeding except to enforce the terms hereof by the parties to this agreement.

NOW, THEREFORE, IT IS STIPULATED THAT:

- 1. a. City owns and operates a wastewater collection and treatment facility "system" consisting of sewers and treatment

plant.

b. During heavy rainfall, City experiences flooding and basement backups.

c. On June 8, 1983, City installed a bypass to relieve said flooding and backups with discharge flowing to the Kishwaukee River, defined as contaminants ^{or about} ~~under~~ ^{in violation of} Ill. Rev. Stats. Ch. 111, para. 1012 (a) without a permit under para. 1012 (b). Further City has operated its plant without a Class I operator.

d. There are problems with City's system that must be remedied to prevent future bypassing violations after proper engineering and investigation.

2. City has commissioned an engineering study in order to provide remedies.

3. Past violations were due to the necessity of avoiding flooding, basement back-up and consequent damage to the health and property of residents. The impact on the public resulting from such violations has been to adversely affect the environment.

4. Future plans for compliance and additional control measures include retention of the firm of Greeley and Hansen to perform a study of the possible causes of the problems of the system and the remedies therefore. A copy of said firms initial findings (Exhibit 1) and comments (Exhibit 2) on the complaint herein, is attached hereto.

WHEREFORE, IT IS AGREED:

A. The parties believe the public interest will be best served by the resolution of this enforcement action under the

terms provided herein. In accordance with the procedure for settlement described in 35 Ill. Adm. Code 103.180, the parties offer this stipulation and proposal for settlement in lieu of a full evidentiary hearing.

B. This stipulation for settlement is expressly conditioned upon, and effective only with, approval hereof in all respects by the Board, and anything contained herein shall be null and void and not used for any purpose whatsoever in the event the Board fails to approve these terms of settlement in all respects and incorporate same in a final Board Order.

C. Respondent, City of Sycamore, shall comply with the Illinois Environmental Protection Act, the Pollution Control Board's Water Pollution Regulations contained in Subtitle C, Title 35 of the Illinois Administrative Code in addition to the terms of this stipulation and proposal for settlement.

D. Respondent agrees to abide by all terms and conditions of all permits issued to it by the Agency.

E. Respondent agrees to take all reasonable and practical measures to eliminate any and all problems with its sewer system. Respondent shall have a reasonable length of time in which to do so following completion of the aforesaid engineering study.

F. Respondent, City of Sycamore, agrees to pay a penalty specified in this paragraph in order to avoid the substantial costs, inconveniences and uncertainties of further litigation. In order to resolve this dispute and as a condition of settlement, Respondent agrees to pay a penalty of nine thousand

dollars (\$9,000.00) into the Environmental Protection Trust Fund within forty-five (45) days from the date on which the Board adopts a final order approving, accepting and incorporating this stipulation and proposal for settlement. The Agency deems the payment to be appropriate to aid in the enforcement of the Act under the circumstances.

WHEREFORE, Complainant and Respondents jointly request that the Board adopt and accept the foregoing stipulation and proposal for settlement as written.

FOR COMPLAINANT

ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY

BY: Craig Coatsworth, Asst Atty Gen.

DATED: 12/18/86

FOR RESPONDENT

CITY OF SYCAMORE

BY: Thomas J. Fenn, Atty

DATED: Dec. 19, 1986